

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 75-1343

B  
P/S

In The

**United States Court of Appeals**

**For The Second Circuit**

THE UNITED STATES OF AMERICA,

*Appellee,*

vs.

PAULA DALLAL,

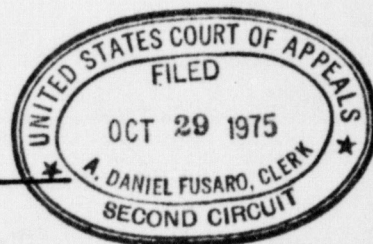
*Appellant.*

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## APPENDIX

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**75 CR 495**

**ATTORNEYS**

**For U. S.: BEHAR**

28.

**CLOSED**

For Defendant: DALLAL;  
~~Court-appointed-counsel~~

Peter Passalacqua  
 -32 Court St., Bklyn,  
 852-2694

Kenneth Kaplan-919 3rd Av  
N.Y. 10022 688-0147

Did distribute cocaine

[illegible]

| DATE    | PROCEEDINGS  |
|---------|--|
| 6-17-75 | Before JUDD, J - Indictment filed - Bench Warrant ordered and issued as to deft DALLAL.  |
| 6/18/75 | Before PLATT, J.- Case called- Deft Dallal present without counsel-deft produced in Court on a Bench warrant-deft arraigned and enters a plea not guilty-bail set at \$5,000.00 P.R.Bond - bench warrant vacated-case to 6/20/75 |
| 6-27-75 | By Platt, J - Order apptg counsel filed (DALLAL) signed by Judge Platt 6-18 but received in Clerks Office June 27, 1975.   |
| 7-3-75  | Before PLATT, J - case called - defts & counsels present - Flavio Oschoa sworn as interpreter - adjd to July 7, 1975 for trial.  |
| 7/7/75  | Letter from Kenneth Kaplan, esq. filed re:substitution as counsel for d. Dallal  |

75 CR 495

| DATE    | PROCEEDINGS  |
|---------|--|
| 7/7/75  | Before PLATT, J. - Case called - Defts and counsel present - Interpreter present - Trial ordered and begun - Jurors selected and sworn - Deft O'Brien after being advised of his rights by the court and on his own behalf enters a plea of guilty to count 1 - sentence adjd without date - bail contd - Hearing on motion to suppress ordered and begun - Trial adjd to 7/8/75 at 9:15 A.M.  |
| 7/8/75  | Before PLATT, J. - Case called - Trial resumed - Hearing on motion to suppress resumed - Deft Fayad's motion to suppress - motion argued - denied - hearing concluded - Trial resumed - Trial contd to 7/9/75  |
| 7/9/75  | Before PLATT, J. - Case called - Defts and counsel present - Trial resumed - Trial contd to 7/10/75  |
| 7/10/75 | Before PLATT, J. - Case called - Defts and counsel present - Trial resumed - Trial contd to 7/14/75  |
| 7/11/75 | 75 M 1083 is inserted in CR file.  |
| 7-14-75 | Before PLATT, J. - case called - trial resumed - deft Dallal motion for a directed verdict - motion denied - deft Fayad motion to dismiss counts 2 and 4 - denied - Trial contd to July 15, 1975.  |
| 7/15/75 | Before PLATT, J. - Case called Defts and counsel present - Trial resumed - Trial contd to 7/16/75  |
| 7-16-75 | Voucher for compensation of counsel filed (DALLAL)   |
| 7-16-75 | Before PLATT, J. - case called - defts Fayad & Dallal present with attorneys - Defts renew all motions - denied - court charges Jury - requests to charge alternates discharged - Marshals sworn - Jury retires to deliberate - Jury returns with a verdict of guilty on counts 1, 2 & 4 as to deft PAULA DALLAL and with a verdict of guilty on counts 3 and 4 and not guilty on count 2 as to deft FAYAD. Jury polled - jury discharged - bail reset at \$10,000 P.R.B. for deft PAULA DALLAL - to be co-signed by her parents and a \$5,000 surety bond as to bail for deft CARLOS FAYAD - trial concluded - sentences adjd without date. |
| 7-16-75 | By PLATT, J. - Order of sustenance filed (15 persons - lunch)  |
| 7-16-75 | 7 stenographers transcripts filed dated : 2 at July 7, July 8, July 9, July 10, July 14 and one dated July 15, 1975) placed in 75 CR-495.  |
| 7-21-75 | 75 M 1237 is inserted in CR file.  |
| 7-21-75 | Notice of Motion filed, xxx. for a new trial, etc. (Paula Dallal) forwarded to Chambers.   |
| 7-24-75 | Notice of Motion filed for a new trial etc (deft Fayad) forwarded to Chambers.   |
| 7-24-75 | Voucher for compensation for expert services filed (FAYAD)   |
| 7-30-75 | Govts reply to deft Fayad's motion for a new trial filed.  |



| DATE    | PROCEEDINGS  |
|---------|--|
| 9/5/75  | Before PLATT, J.- Case called- Defts and counsel present- Deft O'BRIEN sentenced on count 1 pursuant to T-18, U.S.C. Sec. 3651, for treatment and supervision in a Federal Youth Correction facility for a term of 5 years on condition that the defendant be confined in such facility for a period of 6 months, the execution of remainder of sentence of confinement is suspended and the deft is placed on probation for a period of 4½ years under T-18, U.S.C. Sec. 5010(a). On motion of A.U.S.A. Behar counts 2, 3 and 4 are dismissed- Deft FAYAD sentenced on counts 3 and 4 for a period of 5 years on each count to run concurrently- sentenced to a special parole term of 15 years (unsuccessful) on condition that the deft leave the U.S. and not return during special parole term. |
| 9/5/75  | Judgment and Commitment filed- certified copies to Marshal (FAYAD)   |
| 9/5/75  | Judgment and Commitment and Order of Probation filed- certified copies to Probation and Marshal (O'BRIEN)  |
| 9-5-75  | Before PLATT, J - case called - added to 9-19-75 (sentence of deft PAULA DALLAL)   |
| 9-10-75 | Certified copies of Judgments & Commitments ret'd and filed. Defts CARLOS FAYAD AND O'BRIEN Delivered to Warden Metropolitan Corr. Facility, N.Y.  |
| 9-11-75 | Govts reply to deft Dallal's motion to set aside verdict of guilty filed.  |
| 9-16-75 | By PLATT, J - Order filed releasing bail (ROBERT O'BRIEN)  |
| 9/19/75 | Before PLATT, J.- Case called- Deft DALLAL and counsel present- Deft sentenced on counts 1, 2, and 4 for treatment and supervision pursuant to T-18, U.S.C. Sec. 5010(b) until discharged by the Federal Youth Correction Division of the Board of parole as provided in T-18, U.S.C. Sec. 5017(e)- deft cont'd on bail pending appeal-  |
| 9/16/75 | Judgment and Commitment filed- certified copies to Marshal (DALLAL)  |
| 9/22/75 | Notice of appeal filed (FAYAD)   |
| 9/22/75 | Docket entries and duplicate of notice of appeal mailed to court of appeals  |
| 9-23-75 | Stenographers transcript filed dated July 16, 1975 (pgs 1005 to 1134a) placed in this criminal file. 75 CR 460 relates.  |
| 9-25-75 | Notice of Appeal filed (PAULA DALLAL)  |
| 9-25-75 | Docket entries and duplicate of Notice of Appeal mailed to the Court of Appeals (DALLAL)   |

Docket Entries

4a

PROCEEDINGS

73 Order received from the C of A filed that the record be docketed on or before October 8, 1975



INDICTMENT (Filed June 17, 1975)

5a

AJD:SMB:sm  
F. 751,955

**FILED**  
IN CLERK'S OFFICE  
U. S. DISTRICT COURT E.D. NY

JUN 17 1975

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

TIME AM.....  
PM.....

UNITED STATES OF AMERICA

SUPERSEDING INDICTMENT

- against -

Cr. No. \_\_\_\_\_  
(T. 21, U.S.C., §841(a)(1),  
§846 and T. 18, U.S.C. §2)

ROBERT O'BRIEN,  
PAULA DALLAL and  
CARLOS FAYAD, also known as  
Carlos Forero,

Defendants.

THE GRAND JURY CHARGES:

75CR 495

COUNT ONE

On or about the 7th day of March, 1975, within the Eastern District of New York, the defendants ROBERT O'BRIEN and PAULA DALLAL, did knowingly and intentionally distribute approximately Twenty-one (21) grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2).

COUNT TWO

On or about the 30th day of April, 1975, within the Eastern District of New York, the defendants ROBERT O'BRIEN, PAULA DALLAL and CARLOS FAYAD, also known as Carlos Forero, did knowingly and intentionally distribute approximately Twenty-eight (28) grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2).

Indictment

6a

COUNT THREE

On or about the 21st day of May, 1975, within the Eastern District of New York, the defendants ROBERT O'BRIEN and CARLOS FAYAD, also known as Carlos Forero, did knowingly and intentionally possess with intent to distribute approximately Two Hundred Twenty-one (221) grams of cocaine hydrochloride a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2).

COUNT FOUR

On or about and between the 7th day of March, 1975 and the 21st day of May, 1975, within the Eastern District of New York, the defendants ROBERT O'BRIEN, PAULA DALLAL, and CARLOS FAYAD, also known as Carlos Forero, did knowingly and intentionally combine and conspire to distribute quantities of cocaine hydrochloride, a Schedule II narcotic drug controlled substance, in violation of Title 21, United States Code, Section 841(a)(1). (Title 21, United States Code, Section 846).

A TRUE BILL.

Richard B. Gliner  
FOREMAN

David M. Trager  
UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK



1  
2 you the name Paula Dallal; is that right?

3 A He told me the name Paul. And I believe he  
4 gave me her telephone number.

5 Q Now, the discussions that you had with the  
6 informant, did you tell him that you wanted to get in touch  
7 with Paula?

8 A He gave me various information about her.

9 Q And you said you wanted to get in touch with  
10 her?

11 A I told him to arrange a meeting.

12 Q Did you tell him to arrange a meeting for  
13 a specific purpose?

14 A I told him to get in touch with her and to set  
15 up a purchase of an ounce, if she could do it.

16 Q And did he get in touch with her?

17 A Yes.

18 Q Did he call her?

19 A I believe he did.

20 Q How many times did he call her?

21 A I don't know.

22 Q How many times were you with him in that ten  
23 days from March 27 -- from February 27 to March 7th?

24 A I don't recall how many times.

25 Q Did you give him any money to call Miss Dallal?

## Cavuto - cross/Kaplan

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A No, I didn't.

Q Did anybody pay him any money?

A At what time?

Q During this ten-day period.

A I don't recall giving him any money during  
that time?

Q Did you give him any money at any time?

A Yes.

Q How much money did you give him?

A When?

Q At any time?

A I gave him various amounts.

Q How much?

A A total? Since I've known this particular  
person?

Q Yes.

A Approximately, I would say, around \$800.

Q Now, was that \$800 official Government money?

A Yes, it was.

Q You signed out for that?

A Yes.

Q Did you sign yourself? Did you sign the  
requisition for that money?

A I believe I did.



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Q Do you have the requisition here?

A Not for all of the --

Q For any of it?

A Yes.

Q Now, the \$800 was given in how many different instances, again, approximately?

A I would say about five different times.

Q Now, did he keep, if you know, any of the money, himself?

A Yes.

(continued next page.)

Sylflws.

CROSS-EXAMINATION

BY MR. KAPLAN: (Cont'd.)

Q He kept it all?

A I believe he did, yes.

Q Now, he was to produce something for getting that money, wasn't he? He was to give you something, is that right?

A He got the money after.

Q Wasn't he supposed to give you something in return?

MR. BEHAR: Your Honor, can the witness answer the question?

THE COURT: Let him answer the question.

A You asked if he was to do something after he got the money.

Q Yes. He was to do something for the money? There was a quid pro quo here? You paid him and you were to pay for what, what service was he to perform?

A He got his money after he performed the service.

Q What -- what service was that?

A It's supplying information or making an introduction to other people.

Q If he didn't supply the information, or he didn't make the introductions, would he get paid?



1 2

## Cavuto-cross-Kaplan

2 A Probably not.

3 Q Probably or definitely?

4 A No. In this instance he wouldn't have gotten  
5 paid.6 Q Now, was the informant arrested by you, by the  
7 way?

8 A No, he was not.

9 Q Was he ever arrested, do you know?

10 A By whom?

11 Q By anybody?

12 A Yes, he was.

13 Q Is his case pending now?

14 A No, it's not.

15 Q Was there a disposition?

16 A Yes.

17 Q Was it a narcotics case?

18 A No, it was not.

19 Q What kind of case was it?

20 A A State case.

21 Q A what?

22 A State, New York City Police Department case.

23 Q A State what, though? What was the crime he  
24 was charged with?

25 A He was convicted of robbery in the third degree.

1

4

2

Q Did he get any money for putting you in contact  
with Miss Dallal?

3

4

A After March 7th, he received money.

5

Q How much?

6

A One hundred dollars.

7

Q You have the requisition for that?

8

A Yes.

9

Q May I see it?

10

A Sure.

11

MR. BEHAR: Your Honor, I'll object.

12

THE COURT: Let me see it first.

13

MR. BEHAR: Your Honor --

14

THE COURT: May I see it?

15

No, you may not.

16

MR. KAPLAN: May I look at it, your Honor.

17

THE COURT: I said no, you may not.

18

MR. KAPLAN: Oh.

19

BY MR. KAPLAN:

20

Q Now, were you present when the informant made  
any calls to Miss Dallal?

21

22

A No, I was not.

23

Q Were you present with him physically when you  
met Miss Dallal?

24

25

A Yes, I was.



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Cavuto-cross-Kaplan

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THE COURT: All right. Are you ready to answer the question?

THE WITNESS: Yes.

MR. KAPLAN: With your Honor's permission, may the Reporter read the question?

(Read)

A I did not.

Q And you know that now, because there are no notations in your book?

A Yes, and I don't remember any -- speaking to him about her.

Q All right. Now, when --- on that day, on March 7th, did you go to Miss Dallal's apartment?

A Yes, I did.

Q And did you ask her to do something?

A No, I don't remember asking her to do anything.

Q Didn't you ask her to set up a meeting with somebody else?

A No. When we got there she told us that she -- Robby had called her.

Q Didn't -- that who had called?

A Robby.

Q Who was he?

A Robert O'Brien.

4 Cavuto - cross - Kaplan

Was there a conversation about that?

A With my superiors concerning what Irene --

Q With your superiors, with your co-workers?

A No, I don't recall any conversation.

Q At any rate you did nothing with Irene?

A Nothing.

Q Now, how did you introduce yourself to  
Miss Dallal on the 7th?

A I was introduced by the informant.

Q Did you talk about your background at all?

A I don't recall if I did or not.

Q Didn't you say that you were -- did you say you  
were in the contracting business?

A Not at that time, no.

Q You did at one time; is that right?

A Yes.

Q Are you in the contracting business?

A No, I am not.

Q Were you ever in the contracting business?

A Never.

Q That wasn't truthful?

A No.

Q Was your father ever in the contracting business?

A No.



CROSS-EXAMINATION

BY M I. KAPLAN: (Cont.)

Q Did you talk about your background, what type of fellow you were; anything along social lines?

A I may have, I don't recall.

Q How were you dressed?

A I believe I had --

Q You weren't dressed the way you are now?

MR. BEHAR: Your Honor --

THE COURT: Let him finish.

Q How were you dressed?

A As I remember I had a suede jacket on, waist length, and bell-bottom trousers.

Q Then there came a time when you got into the automobile?

A Yes.

Q And that was a Volkswagen?

A Yes, sir.

Q And that was a Government car?

A Yes.

Q You checked that out yourself, didn't you?

A I didn't check it out. I borrowed it from someone who had the car.

Q From another -- from a colleague of yours,

3 Cavuto - cross/Kaplan

A No, I did not.

Q You deemed it important when you spoke to Miss Dallal on three occasions to reproduce the conversation.

MR. BEHAR: Your Honor, I will object.

THE COURT: Yes, argumentative.

MR. KAPLAN: I'm sorry.

THE COURT: I said it's argumentative.

Q At any rate, you didn't deem it important. You didn't have a tape recorder on your person?

A No, I did not.

Q All right.

There came a time that you went to -- you went somewhere in Queens; is that right?

A Yes.

Q Where was that?

A It was the corner of 34th Avenue and 81st in Jackson Heights?

Q Now, in that Volkswagen with you --

A Yes.

Q -- and sitting next to you was the informant?

A Correct.

Q And in the back seat was Miss Dallal?

A Yes.

Q Was Irene there?



5

Cavuto - cross/Kaplan

1

2

A No, I was already standing outside the car.

3

Q Where was Miss Dallal?

4

A She was standing with me.

5

Q Where was the informant?

6

A At that time he was sitting in the car.

7

Q And Mr. O'Brien approached?

8

A Yes.

9

Q And you had a conversation?

10

A Well, prior to joining me DALLAL left and

11

met him and then she brought him over and introduced him to

12

me.

13

Q How did she introduce him, by name?

14

A Yes.

15

Q You didn't know O'Brien; is that right?

16

A No, I didn't.

17

Q Now, when O'Brien approached the car, did you

18

transact whatever you transacted standing up on the outside

19

of the car or did you go in the automobile -- withdrawn.

20

When O'Brien approached, did you have a conver-

21

sation with O'Brien?

22

A I was just introduced to him.

23

Q Subsequent to that you had a conversation?

24

A Yes.

25

Q And at that time he had something presumably

1  
2 Q There are thousands of other things that  
3 change color with the use of that chemical component,  
4 especially cobalt diacyanate? Doesn't it change blue to  
5 many, many substances, including vitamins? Do you know that?

6 A No.

7 Q All right, then.

8 After this was performed and after you were in  
9 the car and after you had possession of Government's  
10 exhibit 1, then did you give money to Mr. O'Brien?

11 A Yes.

12 Q And while you were still in the car?

13 A Yes, I was in this car.

14 Q And you gave how much?

15 A \$900.

16 Q You were in a Volkswagen.

17 Were there any other agents in the vicinity?

18 A Yes, there were.

19 Q How many?

20 A I don't recall how many.

21 Q Well, you knew there were surveilling agents  
22 in the area?

23 A Yes.

24 Q It was planned that they would be there when  
25 you started out?



1 Cavuto-cross/Kaplan

2 MR. BEHAR: I object to the form.

3 THE COURT: I will allow it.

4 Q (continuing) All of those 13 occasions, or  
5 12, or whatever.

6 THE COURT: Was that your purpose?

7 THE WITNESS: Well, when I did call, the purpose  
8 was to attempt to meet with Robert O'Brien.

9 Q Now, all those 13 times, or again, 12 times,  
10 whatever you said to her, the conversation that you said  
11 you had with her, were aimed specifically to your continuing  
12 alleged business meetings with O'Brien, is that true?

13 A Yes.

14 Q And in furtherance of that you asked her on  
15 a number of occasions to do this, to perform this for you,  
16 these meetings, or whatever would result from the meetings  
17 with O'Brien, is that a true statement?

18 A When I called her and spoke to her I would  
19 ask her if she had gotten in touch with Robert.

20 Q By the way, where did you get your training?  
21 In New York or Washington?

22 A Washington, D.C.

23 Q How long did you train?

24 A 10 weeks.

25 Q Four years ago?

Cavuto-cross/Kaplan

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Q Yes.

A Was April 30th.

Q Now, on that occasion again you had one of  
your bureau --

A Yes.

Q It contained no Kel transmitter?

A No, it did not.

Q Miss Dallal was in that car on that occasion,  
too?

A Yes, she was.

Q Who else was in the car?

A Later that evening Robert O'Brien.

Q Anybody else besides you, O'Brien and  
Miss Dallal?

A When?

Q On the occasion of the alleged purchase of  
Government's second exhibit -- the second exhibit -- meaning  
that one (indicating).

A At the time of the transaction.

Q Who was in the car besides you and Miss Dallal  
and later, Mr. O'Brien?

A No one. No one else.

Q Was there a time when you and Miss Dallal were  
in the car alone?



3

Cavuto--cross-Kaplan

1

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THE COURT: You say three were taped and you claim there were 13.

3

4

MR. KAPLAN: There were --

5

THE COURT: He's never given you an answer. You added up? Figures that you jotted down?

6

7

MR. KAPLAN: Yes, your Honor, but they were not all telephone conversations. Some were face to face meetings. I'm now asking a question about telephone conversations.

10

11

BY MR. KAPLAN:

12

Q How many telephone conversations that you had with Paula, did you tape? Three, is that correct?

14

A That's correct.

15

Q How many did you have all told, to the best of your recollection?

16

17

A I don't recall how many but --

18

Q Approximately?

19

A An estimate? I would think possibly eight or nine. In that area.

20

21

Q May I ask you this, Mr. Cavuto? How did you determine which one of those eight or nine conversations that you decided to tape, how did you determine, how did you determine it?

24

25

A I -- I taped the first three and after that I

4 Cavuto-cross-Kaplan

1  
2 didn't tape any more with Paula Dallal?

3 Q You had spoken to Paula prior to tape No. 1,  
4 didn't you?

5 A On the telephone, I did not.

6 Q You had talked to her prior to that?

7 A I had met her, yes.

8 Q You had met her on the 7th, is that right?

9 A Yes.

10 Q How about on March 20th, was that taped?

11 A That was a meeting. It wasn't a telephone  
12 conversation.

13 Q How about on the 21st?

14 A Yes, that was taped.

15 Q How about the meeting? Did you tape the meet-  
16 ing?

17 A No, I did not.

18 Q Now, you say that you determined to do the  
19 first three but after that you -- in effect lost the interest  
20 in doing it? You decided not to do it, is that right?

21 A I didn't do it, no.

22 Q You didn't do it?

23 A That's correct, I didn't.

24 Q And you had a reason for not doing it after  
25 the first three?



BD 3aml

O'Brien-direct

1  
2 Q And at that time you stated that you would  
3 not enter a plea --

4 A Yes.

5 Q -- you would not testify, is that correct?

6 A Yes.

7 Q And at the time you did plead guilty you pled  
8 guilty to one of four counts, is that correct?

9 A Yes.

10 Q Were any other promises made to you?

11 A No.

12 Q Did anyone from the United States Attorney's  
13 Office or anyone connected with the Government at all tell  
14 you what kind of sentence you would get?

15 A No.

16 Q And you pled guilty in this Court?

17 A Yes.

18 Q Before Judge Platt?

19 A Yes.

20 Q Now, Mr. O'Brien, referring to the 7th day of  
21 '75, on that date did you sell 21 grams of cocaine to a  
22 fellow who you knew then as Allen, who turned out to be  
23 Special Agent Cavuto?

24 A Yes.

25 Q And did that sale take place in a Volkswagen

2

1

O'Brien-direct

2

automobile?

3

A Yes.

4

Q And was Miss Paula Dallal present there?

5

A Yes.

6

Q And did Miss Dallal --

7

MR. KAPLAN: I object to the leading

8

constantly.

9

THE COURT: We will try it the other way. He is not necessarily bound, but we will try it and see how it comes out.

10

11

12

13

Q Did anyone introduce you to Agent Cavuto on that day?

14

A Yes.

15

Q Who?

16

A Paula.

17

Q The defendant Miss Dallal?

18

A Yes.

19

20

21

22

A Yes.

23

24

Q And was anyone else present in that Korvette automobile on that day?

25

A Yes.



1 8

2 Q How far was the apartment from where you met  
3 Mr. Cavuto?

4 A About a block away.

5 Q How long have you lived in that apartment with  
6 your father?

7 A Nine years.

8 Q Your father have the same last name you do?

9 A Yes.

10 Q All right. Now, at that time you had -- you  
11 testified you had possession of Exhibit 1, which is on the  
12 table there and that you in effect gave it to Mr. Cavuto, who,  
13 in turn, gave you money, is that right?

14 A Yes.

15 Q Now, at any time did Miss Dallal have possession  
16 of that? Did she ever have that?

17 A Have the cocaine?

18 Q Yes.

19 A No.

20 Q And I think you further testified that you gave  
21 her \$70 which had nothing to do with this alleged transaction?

22 A No. I owed her that.

23 Q All right. Now, on April 30th, you met again?

24 A Yes.

25 Q And on that occasion I think you testified that

9 O'Brien-cross-Kaplan

Miss Dallal again was present?

A Yes.

Q By this time you knew Mr. Cavuto or Allen very well, didn't you? Or at least to the extent of having spoken to him?

A Yes, I spoke to him.

Q A number of times?

A Yes.

Q Now, on that occasion, you testified, that there was a similar transfer of certain grams of what's alleged to be cocaine from you to Mr. Cavuto, is that right?

A Yes.

Q And again monies were given to you?

A Yes.

Q Now, at any time, if you remember, on April 30th, did Miss Dallal have possession at all of that exhibit?

A No, I handed it to him.

Q At no time, either time?

A No.

Q You brought it on both occasions with you and you gave it on both occasions to Cavuto?

A Yes.

Q At any time, Mr. O'Brien, did anybody promise you any money if you cooperated with the -- with Mr. Cavuto's



10 1

2 A I can't really state a month. People just talk  
3 about people, gossip.

4 Q Did you talk to anybody in the area of the  
5 apartment that Miss Dallal had with her roommate Irene about  
6 Miss Dallal's reputation during April, May, March, 1975?

7 MR. KAPLAN: I object to the form.

8 A No.

9 MR. BEHAR: No further questions.

10 THE COURT: The answer is no?

11 THE WITNESS: The answer is no.

12 MR. KAPLAN: Your Honor, I call Miss Dallal,  
13 please.

14 P A U L A D A L L A L , the defendant, was sworn by the  
15 Clerk of the Court and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. KAPLAN:

18 Q Miss Dallal, you are one of the defendants  
19 in this case, is that right?

20 A Yes.

21 Q Would you tell us how old you are?

22 A 23.

23 Q When and where were you born?

24 A Brooklyn.

25 Q Please just a little louder.

11 1

Dallal-direct-Kaplan

2 A September, 1951 in Brooklyn.

3 Q Where?

4 A In Brooklyn.

5 Q Did you subsequently move to Bayside?

6 A Yes.

7 Q That is in Queens?

8 A Yes.

9 Q How long did you live in Bayside?

10 A 15 years.

11 Q Did there come a time when you temporarily  
12 left your home and took an apartment?

13 A Yes.

14 Q And when was that?

15 A 1971.

16 Q How long did you stay in your apartment?

17 A Three years.

18 Q Did you have a roommate?

19 A Yes.

20 Q All three years?

21 A Yes.

22 Q What was her name?

23 A Debbie.

24 Q Now, you are back at home, is that right?

25 A Yes.



Dallal-direct-Kaplan

12 1

2

Q Do you now live in Bayside?

3

A No.

4

Q Have you moved?

5

A Yes.

6

Q You live with your family?

7

A Yes.

8

Q Where?

9

A Great Neck.

10

Q Is that in a home or apartment?

11

A A home.

12

Q You say your family, will you tell His Honor

13

and the jury what you mean?

14

A My mother, father, brother.

15

Q Is your mother in Court now? I mean was she?

16

A Yes.

17

Q How about your brother?

18

A Yes.

19

Q Any other members of your family?

20

A No.

21

Q Where did you grow up?

22

A In Bayside.

23

Q Did you go to school?

24

A Yes.

25

Q Where did you go to school?

## Dallal-direct-Kaplan

13

1

2

A In Bayside. Bayside High School.

3

Q Did you Graduate?

4

A Yes.

5

Q What year?

6

A 1969.

7

Q Did you go to college?

8

A No.

9

Q Now, after you graduated school, what did you

10

do?

11

A (No response.)

12

Q Did you get a job?

13

A Not until a year later.

14

Q Not until a year later did you get a job?

15

A Yes.

16

Q Where was that job?

17

A Ronnie Fashions.

18

Q Where are they located?

19

A 1400 Broadway.

20

Q How long did you work for them?

21

A Four years.

22

Q In what capacity?

23

A I was a secretary-receptionist.

24

(Continued next page.)

25



1  
2 DIRECT EXAMINATION

3 BY MR. KAPLAN (Cont'd):

4 Q That -- that company is out of business now?

5 A Yes.

6 Q You remained with them up to that time?

7 A Yes.

8 Q Do you work now? Are you presently employed?

9 A Yes.

10 Q Would you tell us by whom and in what capacity?

11 A Concord Fabrics, 1411 Broadway. I do clerical  
12 work.

13 Q What salary do you make now?

14 A \$140.

15 Q Is that net?

16 THE COURT: I can barely hear you and I am sit-  
17 ting right alongside of you.

18 \$140 a week?

19 THE WITNESS: Yes.

20 THE COURT: Keep your voice up.

21 Q Is that net or gross?

22 A Net.

23 Q What is your gross salary?

24 A Excuse me. Gross. That's gross.

25 Q Now, have you ever, prior to -- prior to June 18th,



Dallal - direct

been arrested?

A No.

Q Ever been in trouble with any policeman?

A No.

Q Any police department?

A No.

Q Anybody?

A No.

Q You are shaking your head. The answer is no?

You shake your head again.

The answer is no; is that right?

A Yes.

Q Please answer so the reporter can get the answer.

All right. Now, on or about March of this year, where did you live?

A In Bayside.

Q What was the address?

A 210-50 41st Avenue.

Q And did you live alone?

A No.

Q You had a roommate?

A Yes.

Q And what was her name?

A Irene.

Dallal - direct

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Q Now, were those calls all directed to your apartment?

A Yes.

Q Did you see him in person at all?

A Yes.

Q How many times did you see him?

A About eight times.

Q Is that in addition to the 20-odd phone calls?

A Yes.

Q So would it be accurate to say that there was a total of about 28 occasions that you had some sort of contact?

Would that be accurate?

A Yes.

Q All right.

Would you please tell the Court and Jury, Paula, what was the substance of all of these visits and calls?

MR. BEHAR: Your Honor, I'll object.

THE COURT: I'll have to sustain it, unless she can't start with the first and go through.

Q All right. Now, beginning -- beginning with the first call, would you tell the Court what was the substance of that call, in effect, what did he ask you to do, if anything?



Dallal - direct

810

1  
2 A He asked me if I could get cocaine for his  
3 friend Al.

4 Q And did he make that request again?

5 A Yes. He said that his friend Al had -- was  
6 getting cocaine from somebody and the person left and he  
7 couldn't get it any more and he really wanted to get it.

8 Q How many times did he make this request of  
9 you?

10 A Just about every time he called.

11 Q Did he insist?

12 MR. BEHAR: Your Honor, can we have --

13 THE COURT: Sustained.

14 MR. KAPLAN: All right.

15 Q Tell us -- tell us again, in these telephone  
16 calls --

17 MR. BEHAR: Can we have which phone call, your  
18 Honor?

19 Q Let's talk about the first six, if you can re-  
20 member.

21 A Before he called the first six times, he came  
22 over.

23 Q All right. About -- let's talk about his coming  
24 over.

25 What was the substance of his conversation with



Dallal - direct

812

1  
2 occasion on the 26th?

3 A 25th.

4 Q 25th, did he speak to you?

5 A Yes.

6 Q And was -- would you tell the Court and Jury,  
7 please, the subject of those -- of that conversation?

8 A He just asked me if I could get him any cocaine  
9 or any drugs.

10 Q And what did you say to him?

11 A I told him no.

12 Q And what did he say, if anything? Tell us exactly,  
13 chronological order, what he said and what you said?

14 A He said "If you can, would you please try to?  
15 My friend Al wants to buy some cocaine" -- no, he didn't  
16 say his name. He didn't say Al. He said, "My friend wants  
17 to buy some cocaine. He can't get it any more and if you  
18 could please find out if any of your friends could get cocaine."

19 Q What did you say to him?

20 A I just said, "I don't know."

21 He came over about 12:00 o'clock at night. I was  
22 very tired.

23 Q How long did he stay?

24 A About 45 minutes.

25 Q Did you say anything else when he made that

Dallal - direct

request?

A No.

Q Now, there came a time after that that the came to you a second time and a third time; is that right?

A He came over, I believe the next day or the day after. I am not sure.

Q Was a conversation essentially the same on the second visit?

MR. BEHAR: Your Honor, can we have the conversation?

THE COURT: Yes. Sustained.

Q Well, would you tell us what he said to you and what you said to him on the second visit?

A He was pretty much general because he had come over with his friend Ronnie and a few other people were around, just stayed like a whole afternoon.

Q What did he say?

A He asked me again and -- he asked me if I could get him cocaine again or anything he asked me.

Q What did you say?

A I said I do not know.

Q He was there a long time. What else did he say?

A Then other people started coming over and everybody was just talking in general.



Dallal - direct

1  
2 constantly.

3 Q Four or five times a day?

4 Who answered the telephone?

5 A Either I did or my friend Irene.

6 Q All right. And what did he want every time he  
7 called?

8 A "Please, please, can you get me some cocaine.  
9 My friend lost his connection. He really wants. He has a lot  
10 of money. He'll show you the money beforehand. Please, please.  
11 You'll get something out of it. Please."

12 Q What hours were these calls?

13 A Mostly about 4:30, 5:00 o'clock. I believe he  
14 worked and called me when he got home.

15 Q did there come a time that you met Mr. Cavuto?

16 A Yes.

17 Q And under what name?

18 A Allan.

19 Q When is the first time you met him?

20 A March 7th.

21 Q Did you have a conversation with him?

22 A Yes.

23 Q Without you tell the Court what he said to you  
24 and what you said to him?

25 A He came in with Jeff and Jeff introduced him to

Dallal - direct

me as Allen and said "This is my friend, the one that wants to buy the cocaine."

Q What did he say?

A Allen?

Q Yes.

A He didn't -- he really didn't say much. I don't really remember. I don't think he said too much until we went in the car.

Q And then what did he say in the car?

A He said "I want to show you the money so that you know that I really have it." You know. he took it out and counted it in front of me.

I hadn't asked him to take it out. Then he put it away and he asked me for directions and how to get there. "Was Robby usually on time," and it started to rain out. And there had been some traffic and then we started talking about that.

Q All right.

Now, prior to meeting Allen or meeting Mr. Cavuto, you had these number of meetings with Jeff; is that right?

A Yes.

Q And what transpired at these various meetings, is what you in effect testified to; is that right?

A Yes.



Dallal - direct

817

1  
2 Q Now, from March 5th until -- until April 30th,  
3 did you talk to Mr. Cavuto?

4 A Yes.

5 THE COURT: March 7th?

6 MR. KAPLAN: I'm sorry. March 7th, your Honor.

7 Q Did you talk to Mr. Cavuto?

8 A On the telephone and he came to my apartment  
9 twice.

10 Q Now, had there not been the insistance of Jeff,  
11 would you have met Allen?

12 MR. BEHAR: Objection, your Honor.

13 THE COURT: Sustained.

14 Q Did you ever talk to your roommate Irene about  
15 the calls that Jeff was making?

16 A Yes.

17 Q What did you say to her about that?

18 MR. BEHAR: Objection, your Honor.

19 THE COURT: I'll allow what she said to Irene  
20 but I won't allow anything that Irene said to her.

21 MR. KAPLAN: Yes.

22 Q What did you say to Irene about these calls?

23 A I told Irene to keep telling him that I wasn't  
24 home and I never answered the phone. I hardly ever answered  
25 the phone.

Dallal - direct

818

1  
2 Q Why did you say that?

3 V A I didn't want to speak to him. He would call  
4 about four or five times a day and he was very annoying.

5 Q Always about the same subject matter?

6 A And he was fighting with his friend Ronnie and  
7 he would call about that also.

8 Q Now, of the 20 times that you testified that  
9 Jeff called you, how many times did you actually answer the  
10 telephone, speak with him?

11 A Twice. I spoke to him sometimes the other times.  
12 I answered myself maybe just twice.

13 Q A total of how many times would you say?

14 A That I spoke to him? May 15.

15 Q That includes --

16 A He would call back. Like about a half hour later  
17 he would have Irene -- tell Irene to have me call him back.  
18 When I didn't, he would call back about a half hour later.

19 Q How many times, if you know, did he ask Irene to  
20 have you call him, that is, Jeff?

21 A Every time he called. If she said I wasn't around,  
22 every time.

23 Q You were present of course?

24 A Yes.

25 Q You just didn't answer the telephone? And



Dallal - direct

824

1  
2 in touch with Jeff? If you get in touch with Robby  
3 and I said okay and they left.

4 He came up with Jeff. They both left. I'm  
5 not sure if Allen took down my phone number then or  
6 if it was the next time. I am not sure.

7 BY MR. KAPLAN:

8 Q but when did you see him after that?

9 A I don't know the exact date.

10 Q But there did come a time when you saw him again?

11 A Yes.

12 Q What was the substance of that conversation,  
13 if anything?

14 Was it about again getting cocaine?

15 A The same thing. "Please get in touch with Robby.  
16 Please, I have a lot of people who want cocaine. Please get  
17 tin touch with him. I really appreicate it if you did."

18 I told him how I felt about Jeff, that I didn't  
19 like him and I didn't want him over. He said, "Please, Jeff  
20 won't come with us. Jeff won't have to come. Just please" --

21 Q Who said that?

22 A Al. Alfred.

23 Q Was this the second time he came over?

24 A Yes.

25 Q What else did he say, if anything concerning

Dallal - direct

825

1  
2 this general subject?

3 A Just that he really would appreciate it and  
4 he had a lot of people that wanted it and liked it. Or -- and  
5 since I really -- I didn't want to go, he wanted me to give  
6 him Robby's phone number.

7 Q When you say you recally didn't want to go,  
8 did you tell him you didn't want to go?

9 A I don't know if I said it on that date or during  
10 the phone call. When he came up, he only came up for about  
11 five minutes, the most.

12 Q Did there come a time after that that you received  
13 phone calls?

14 A Yes.

15 Q From Mr. Cavuto?

16 A Yes.

17 Q How many phone calls did you receive from him?  
18 Again, approximately.

19 A I received on my own maybe 14, 15, but Irene  
20 also told me that he called a lot of time when I wasn't home.

21 Q How many times of those 14 times you spoke to him  
22 each and every time?

23 A Yes, I think so.

24 Q Now, how many times had he called that you  
25 learned and you weren't present?



2 Dallal-direct

to April 30th, that five week period approximately?

A That I spoke to him?

Q Yes.

A About 14 or 15 times.

Q Each of these conversations, were they always concerning --

THE COURT: Sustained.

Q You spoke about the first conversation, how about the second conversation. What was that ab out, if you remember?

A They were all, "Paula, did you call Robbie," I answered, "No, his line was busy." I never said yes because I never even tried him. He just kept saying, "Can you please, or "Just give me Robbie's number." I said I don't give anybody's number out. He said, "Please, I would like to buy it. Money is no problem," he said. "Jeff doesn't have to come if you don't like him so that's no problem." He said, "Please keep tr, ing Robbie. Do you want me to call you back? Tell me when."

Q That was the substance of the second call?

A Practically every one.

Q These phone calls, when was the last time you had any contact, prior to an arrest, with Mr. Cavuto?

A On April 30th.

3

Dallal-direct

Q AT that time had he called you -- had he called you on April 30th?

A Yes.

Q What did he say?

A He called me about 7:00 o'clock, 7:15 and asked me if I spoke to Robbie and what time exactly were we going to meet him and if I was ready to leave and I am not sure if I had him call me back about five minutes later.

Q Had he called you prior to the week prior to the 30th, six days preceding the 30th?

A I believe so.

Q If you remember, how many calls did he make during that period of time?

A Five.

Q If you can remember, what was the substance of the first of those five calls?

A I don't remember -- it was in the middle of April or April 20th I was moving out of my apartment. I was living in my home as of April 12th. I was moving out of the apartment and Irene was moving stuff out. Every time I did see her she told me Al had called and he left a phone call.

MR. BEHAR: Can we have an answer to counsel's question?

THE COURT: It's not very responsive but I will



1 5

Dallal-direct

832

2 A Yes.

3 Q How many calls were made to your parents' home?

4 A Four or five.

5 Q Was this in addition to the 14 calls during the  
6 earlier period when you were at the apartment?

7 MR. BEHAR: Can we get a time frame?

8 THE COURT: This was during the last week?

9 THE WITNESS: Yes.

10 Q Of the four calls or so to your home, if you  
11 know, did your father talk to Mr. Cavuto?

12 A Yes.

13 Q Did you talk to him?

14 A On that same call?

15 Q No, on others.

16 A Yes.

17 Q Would you tell us the first of those four calls  
18 that you were a participant in? What was said at that time  
19 between you and Mr. Cavuto?

20 A I don't remember exactly.

21 Q Do you remember the gist of those four calls,  
22 the substance?23 A Just could we please meet with Robbie, "I'll  
24 exchange phone numbers." I said, "I won't give any phone  
25 number out." He would go. I said it would be fine with me

Dallal-cross

1

2

Q Who was the mutual friend?

3

A Joe.

4

Q Joe?

5

A Yes.

6

Q Is that Joe Monti?

7

A Yes.

8

Q Before you learned that Agent Cavuto was an

9

undercover agent, in your dealings with Agent Cavuto did you

10

ever lie to him?

11

A Yes.

12

Q What?

13

THE WITNESS: Lied to him.

14

Q How many times?

15

A I don't remember offhand.

16

Q After you learned that Agent Cavuto was an

17

undercover agent, did you lie to him then?

18

A No.

19

Q What did you lie to Cavuto about?

20

A Saying that my father had taken ill.

21

Q Your father had not taken ill?

22

A No.

23

Q Did you lie to him about anything else?

24

A Saying that I had calle d Robby and he wasn't

25

home.



Dallal-cross

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Q Anything else?

A Telling him my father was in Japan.

Q Anything else?

A Not that I remember.

Q So that conversation we heard on the tape where you tell Agent Cavuto that Jeff has been really insensitive, that you really care about your father and Jeff shouldn't have said what he said, that was a lie?

A That was true. If I said my father was ill maybe they would have some compassion and leave me alone.

Q Well, when you told Agent Cavuto you didn't want to bother with Jeff any more because of Jeff's insensitive comment about your father's illness, that was your way of having them leave you alone?

A That was one of them. I didn't particular care for Jeff anyway.

Q But following that conversation, you met Agent Cavuto?

A Yes.

Q Without Jeff?

A Yes.

Q When Agent Cavuto said O.K., Jeff won't be there, I will deal with you alone —

A No, I met him after a series of phone calls.

Dallal-cross

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in my apartment but I am not sure.

Q What kind of a relationship did you have with Mr. O'Brien?

A I spoke to him occasionally. He used to call my house to see if my friend Joe was there.

Q Excuse me?

A To see if my friend Joe was there.

Q Did you ever get drugs from Mr. O'Brien?

A Previous?

Q Yes.

A Yes.

Q On how many occasions?

A Once.

Q What kind of drugs?

A Cocaine. For myself or did I go with somebody?

Q I just asked you if you ever got drugs from Mr. O'Brien.

How much cocaine did you get from him on that occasion?

A One gram.

Q What did you do with that one gram?

A I had went with my friend Alex to get it.

Q Your friend Alex?

A Yes.

Q What did you do with the one gram?



Dallal - cross/Behar

2am  
gr/nc

CROSS-EXAMINATION

BY MR. BEHAR: (Cont.)

Q In December, 1974, when you met Robby, with Alex, that was the second time you met Robby?

A I think so, yes.

Q And Alex purchased a gram of cocaine?

A Yes.

Q Did you get any money from either one of those parties at that time?

A No.

Q Between that time and March the 7th, did you make any introductions of people to Robby?

A No.

Q On March the 7th, Mr. O'Brien gave you \$70.00, didn't he?

A Yes.

Q What was the \$70.00 for?

A I had lent it to him.

Q When?

A In December.

Q When you met him with Alex?

A Yes.

Q In December of '74, you had lent Mr. O'Brien \$70.00?

11 Dallal - cross/Behar

A Yes.

Q And then you told Agent Cavuto that the price of three-quarters of an ounce that's left would be \$900?

A Yes.

Q And then Agent Cavuto asked you about the quality of the cocaine that you were going to arrange for him to get; is that correct?

A I believe he did, yes.

Q And you told Agent Cavuto, "Don't worry, I brought other people to O'Brien and they copped the grams and there was never any problem"?

A Yes.

Q What were you doing at that time? Were you waiting for a phone call from O'Brien?

A Yes.

Q And did you tell Agent Cavuto --did you have another conversation with Agent Cavuto while you were waiting for that phone call?

A I believe so.

Q And you asked Agent Cavuto if he wanted to purchase a Thai stick, didn't you?

A Thai stick, yes.

Q What is a Thai stick?

A It's marijuana.



13

Dallal -ccross/Behar

THE WITNESS: Yes.

THE COURT: In what form?

THE WITNESS: In a plastic bag, a little bag.

THE COURT: All right.

BY MR. BEHAR:

Q IT was about an ounce of that, wasn't there?

A Yes.

Q Did you offer to sell th e to Agent Cavuto?

A Yes.

Q What did you want for that?

A I don't remember.

Q Where did you get that marijuana?

A I don't remember.

Q You remember if it was a male or a female?

A I think it was a male. I don't remember.

Q Do you remember if it was a relative or a

friend?

A I don't remember.

Q How long had you had the gold colored marijuana  
in your house?

A I don't remember.

Q How long have you had the Thai stick in your  
house?

A I don't remember.

Dallal-cross

885

in touch with Robby and you lost contact with Robby?

A No.

Q You didn't tell Agent Cavuto you didn't want any part of this dirty business?

A Not at that time.

Q At that time you told Agent Cavuto you've got a spoon of zoom?

A Yes. I didn't say I had it. A spoon of zoom.

Q You asked Agent Cavuto if he wanted a spoon of zoom?

A Yes.

Q What is a spoon of zoom?

A A spoon of speed.

Q When you say speed, do you mean methamphetamines?

A I don't know.

Q Speed as far as you know is an illicit drug in the amphetamine family?

MR. KAPLAN: Objection.

THE COURT: Overruled.

A Yes.

Q At that time you asked Agent Cavuto if he wanted a spoon, which is a quantity?

A Yes.

Q Of speed?



Dallal-cross

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5

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A Yes.

3

Q You also told him that Robby would have this

4

week?

5

A Yes.

6

Q Where were you going to get the amphetamines?

7

A I don't remember.

8

Q Do you remember if it was a male or female?

9

A No.

10

Q A friend or relative or a mere acquaintance?

11

A I don't remember. I don't remember even if I

12

could have gotten it.

13

Q Since Christmas time you were buying drugs,

14

correct?

15

MR. KAPLAN: I object to the form.

16

THE COURT: Overruled.

17

A Yes.

18

Q Were you using drugs?

19

A Yes.

20

Q What kind of drugs were you using?

21

A Barbiturates.

22

Q How frequently were you using barbiturates?

23

A I don't remember.

24

Q Were you taking them more than once a day?

25

A No.

2

Dallal -cross/Behar

THE COURT: What was that? Tuinals?

THE WITNESS: Tuinals.

THE COURT: T-u-m-i-n-o-l-s?

THE WITNESS: I think so. Or "n".

Q You didn't have a prescription for those tuinals,  
did you?

A No.

Q You weren't under a doctor's care at that time,  
were you?

A No.

Q Where did you get those tuinals?

A I don't remember.

Q And how many tuinals did you have in the  
apartment when Jeff first came there?

A I don't remember.

Q More than ten?

A I don't remember.

Q More than twenty?

MR. KAPLAN: I object, your Honor. Asked  
and answered.

THE COURT: Objection overruled.

A I don't remember.

Q There came a time when those -- withdrawn, I'm  
sorry.



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Q Would you tell the Court and jury who arrested you?

A Agent Cavuto and another agent.

Q Would you describe what happened at that arrest?

A He told me I was under arrest.

Q What did you say?

A If I could see the warrant.

Q Had you known that Robby was already arrested?

A Yes.

Q Did you attempt to flee or anything like that?

A No.

MR. BEHAR: Objection, your Honor.

THE COURT: Sustained.

Q Then what happened?

A He showed me the warrant. I told him I wasn't going anyplace with him.

Then the other agent said, "I have to use the handcuffs." I said, "I will go."

I got in the car and started crying and I asked why he forced me to do it. Why did he make me do it.

Q Who did you say that to?

A Agent Cavuto.

Q What did he answer?

A He didn't say a word. He just took out a piece

1  
2 Q How many times had Mr. Cavuto called you before  
3 you said that?

4 A He hadn't called me yet, Jeff called me.

5 Q How many times?

6 A I don't remember. At least every day.

7 Q Did you tell Mr. Cavuto during that ride down-  
8 town why you said that?

9 A No.

10 Q What was the reason?

11 MR. BEHAR: Objection, your Honor.

12 THE COURT: Take a five-minute recess, ladies  
13 and gentlemen. Don't discuss the case.

14 (The jury left the courtroom.)

15 THE COURT: Wait a minute, Miss Dallal. Go  
16 back on the witness stand, please.

17 Read the last few questions and answers.

18 (Whereupon, the reporter read the last few  
19 questions and answers.)

20 THE COURT: What is your answer?

21 THE WITNESS: Jeff had called me every day and  
22 I really didn't want him bothering me any more. They  
23 were the only two people I told my father had gotten  
24 sick and that I was going to Japan with my mother to  
25 see him and wouldn't be around. I thought he wouldn't



1  
2 call me any more. And he wouldn't keep asking me  
3 about cocaine.

4 THE COURT: When do you say you reached this  
5 conclusion?

6 THE WITNESS: The first time Agent Cavuto came  
7 to my house after March 7th.

8 THE COURT: That is March 20th.

9 At that point, you said your father was sick?

10 THE WITNESS: Yes.

11 THE COURT: All right, I will allow it.

12 MR. BEHAR: Your Honor, if I may be heard on it?  
13 At this point for counsel to ask his client, witness,  
14 the question of why gives the witness an opportunity  
15 to make a self-serving statement which obviously is  
16 the witness proffered testimony.

17 THE COURT: I don't know that I would object to  
18 it if I were you.

19 MR. BEHAR: I choose to object to it, your  
20 Honor. I think it is a self-serving statement and  
21 it is quite improper at this time. The jury has the  
22 facts before them.

23 THE COURT: I understand it should have been  
24 done on direct if it was to be done at all.

25 MR. KAPLAN: It was done on direct, respect-

Dallal-redirect

918

1 fully, and we were not permitted.

2 THE COURT: I am inclined to think in light of  
3 all that has transpired I will let it in.

4 If you look at the evidence, I don't see why  
5 you object to it.

6 MR. KAPLAN: It's your Honor's intention to  
7 let the reporter read what transpired to the jury?

8 THE COURT: No. You will ask the question and  
9 she will answer it.

10 (The jury entered the jury box.)

11 THE COURT: Do you want the question reread  
12 before the recess?

13 MR. KAPLAN: Thank you.

14 (Whereupon, the last question was read by the  
15 reporter.)

16 THE WITNESS: What was the reason I didn't tell?

17 Q What was the reason you told him that your dad  
18 was sick?

19 A Because Jeff had been calling me and calling me  
20 to arrange another meeting to get them cocaine. The only  
21 way I could think they would leave me alone was if I told  
22 them I was going to Japan with my mother and my father had  
23 gotten sick in Japan.

24 I figured Jeff would stop calling. He didn't. He kept  
25



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asking me, and that's when I got angry.

Q How about Mr. Cavuto, did that reason stop him?

A I didn't know that he would stop. I had given him my phone number. I didn't know he was to keep calling me. I figured the first couple of times I told him I could not get in touch with Robby he would stop calling me.

Q There were other calls from Mr. Cavuto after you told him that?

A Yes.

Q Did you tell him other lies on any of those conversations with him?

A I don't remember.

Q Did you tell him that you had spoken to Robby when you in fact had not?

A Yes.

MR. BEHAR: I object.

Q What was the reason for that?

MR. BEHAR: I object.

THE COURT: I will allow it.

A He asked me --

Q He being whom?

A Agent Cavuto. And I told him that I did call and he wasn't home or his line was busy. I actually didn't call Robby.

Dallal - redirect

6am  
gr/nc

REDIRECT EXAMINATION

BY MR. KAPLAN: (Cont.)

Q Now, you were asked whether or not you ever said to Mr. Cavuto, "Will you stop this dirty business."

Your answer was: "Not at that time."

Did there ever come a time that you said that to Mr. Cavuto?

A Not in those words. I just said to him, "Don't it even bother you that my father's sick and I don't want to be bothered with this right now? Can't you just leave me alone?"

Q What did he say to that?

A He said, "Well, I hope everything is all right with your father but maybe"--I don't know. Something, "When that's all settled with" or if -- "if you find out everything is all right with your father, then we can"--- you know, "you'll find out from Robby."

Q But he still proposed purchases?

A Yes.

Q Did Jeff propose purchases notwithstanding the alleged illness of your father?

A No. He just kept on pursuing it and then he started calling and I started hanging up on him.

Q From March 7th or let's say March 5th, or --



REQUEST TO CHARGE

59a

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA,

AGAINST

75 Cr 495

ROBERT O'BRIEN,  
PAULA DALLAL, and  
CARLOS FAYAD,

Defendants.

-----X

Defendant's Dallal Requests to Charge

Request No.1- Unlawful Entrapment

Miss Dallal asserts that she is the victim of an unlawful entrapment as to the crimes charged against her in the indictment.

Where a person has no previous intent or purpose to violate the law, but is induced and persuaded by law enforcement people or their agents to commit a crime, then he or she is a victim of entrapment and the law as a matter of policy forbids his or her conviction in such a case.

On the other hand where a person already has the readiness to break the law, the fact that Government agents provide what appears to be a favorable opportunity is not entrapment.

If the jury based upon the evidence in this case is left with a reasonable doubt whether Miss Dallal had the previous intent or purpose to commit any offense of the character here charged, and did so only because she was induced or persuaded by some officer or agent of the Government, then the jury must acquit her.

The Government must show beyond a reasonable doubt that the defendant had a predisposition to commit the offenses charged in the indictment.

## CHARGE OF THE COURT

(p.60a-102a)

(The jury is in the jury box.)

1  
2  
3 THE COURT: Now, ladies and gentlemen of the  
4 jury, I am going to instruct you on the law in the  
5 case. I read most of the charge which I will give to  
6 you so you have to pay particular attention. It's  
7 harder to follow but it minimizes the possibility of  
8 error, and that is most important. Try to follow what  
9 I say. If you don't hear anything raise your hand.  
10 If I don't talk loud enough raise your hand. Listen  
11 to all of the instructions because your verdict must  
12 be based on the instructions as a whole.

13 Now that you have heard the evidence and the  
14 arguments, it becomes my duty to give the instructions  
15 of the Court as to the law applicable to this case.

16 It is your duty as jurors to follow the law  
17 as stated in the instructions of the Court, and to  
18 apply the rules of law so given to the facts as you  
19 find them from the evidence in the case.

20 You are not to single out one instruction alone  
21 as stating the law, but must consider the instructions  
22 as a whole.

23 Neither are you to be concerned with the wisdom  
24 of any rule of law stated by the Court. Regardless  
25 of any opinion you may have as to what the law ought  
to be, it would be a violation of your sworn duty to



## Charge of the Court

base a verdict upon any other view of the law than that given in the instructions of the Court; just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in the case.

You must not permit yourselves to be governed by sympathy, bias, prejudice or any other considerations not founded on evidence and these instructions on the law.

Justice through trial by jury must always depend upon the willingness of each individual juror to seek the truth as to the facts from the same evidence presented to all the jurors; and to arrive at a verdict by applying the same rules of law as given in the instructions of the Court.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the indictment and the denial made by the not guilty pleas of the accused. You are to perform this duty without bias or prejudice as to any party. Again, the law does not permit jurors to be governed by sympathy, prejudice or public opinion. Both the accused and the public expect that you will carefully and impartially consider all

## Charge of the Court

the evidence in the case, follow the law as stated by the Court and reach a just verdict, regardless of the consequences.

I am not sending the exhibits which have been received in evidence with you as you retire for your deliberations. You are entitled, however, to see any or all of these exhibits as you consider your verdict. I suggest that you begin your deliberations and then, if it would be helpful to you, you may ask for any or all of the exhibits simply by sending a note to me through one of the marshals.

An indictment is but a form or method of accusing a defendant of a crime. It is not evidence of any kind against the accused.

There are two types of evidence from which a juror may properly find a defendant guilty of a crime. One is direct evidence -- such as the testimony of an eyewitness. The other is circumstantial evidence -- the proof of facts and circumstances which rationally imply the existence or nonexistence of other facts because such other facts usually follow according to the common evidence of mankind. Thus, the footprint of a man in the sand implied to Robinson Crusoe that there was another man with him on a



## Charge of the Court

4 1  
2 desert island and indeed there was, the man Friday.  
3 Thus on the other hand you may have direct evidence  
4 of the issue and on the other hand you may have  
5 circumstantial evidence of the issue. The law does  
6 not hold that one type of evidence is necessarily  
7 of better quality than the other. The law requires  
8 only that the Government prove its case beyond a  
9 reasonable doubt both on the direct and circum-  
10 stantial evidence. At times the jury might feel  
11 that circumstantial evidence is of better quality.  
12 At other times they may feel direct evidence is of  
13 better quality. That judgment is left entirely to  
14 you.

15 As a general rule, the law makes no  
16 distinction between direct and circumstantial  
17 evidence, but simply requires that, before  
18 convicting a defendant, the jury be satisfied of  
19 the defendant's guilt beyond a reasonable doubt from  
20 all the evidence in the case.

21 The law presumes the defendant to be  
22 innocent of crime. Thus a defendant, although  
23 accused, begins a trial with a clean slate -- with  
24 no evidence against him. And the law permits nothing  
25 but legal evidence presented before the jury to be

## Charge of the Court

5 1 considered in support of any charge against the  
2 accused. So the presumption of innocence alone is  
3 sufficient to acquit a defendant unless the jurors  
4 are satisfied beyond a reasonable doubt of the  
5 defendant's guilt after careful and impartial  
6 consideration of all the evidence in the case.  
7

8 The burden is always upon the prosecution to  
9 prove guilt beyond a reasonable doubt. This  
10 burden never shifts to a defendant; for the law  
11 never imposes upon the defendant in a criminal case  
12 the burden or duty of calling any witnesses or  
13 producing any evidence.

14 A reasonable doubt does not mean a doubt  
15 arbitrarily and capriciously asserted by a juror  
16 because of his or her reluctance to perform an  
17 unpleasant task. It does not mean a doubt arising  
18 from the natural sympathy which we all have for  
19 others. It is not necessary for the Government to  
20 prove the guilt of the defendant beyond all possible  
21 doubt. Because if that were the rule, then few  
22 people would ever be convicted. It is practically  
23 impossible for a person to be absolutely sure and  
24 convinced of any controverted fact which, by its  
25 nature, is not susceptible of mathematical certainty.



## Charge of the Court

In consequence the law says that a doubt should be a reasonable doubt, not a possible doubt.

A reasonable doubt is a doubt based upon reason and common sense, the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must therefore be proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly in the most important of your own affairs.

The jury will remember that a defendant is never to be convicted on mere suspicion or conjecture.

Again, a reasonable doubt means a doubt sufficient to cause a prudent person to hesitate to act in the most important affairs of his or her life.

To get to the charges themselves, Count 1 of the indictment reads as follows: "On or about the 7th day of March, 1975, within the Eastern District of New York, the defendants Robert O'Brien and Paula Dallal, did knowingly and intentionally distribute approximately 21 grams of cocaine hydrochloride, a Schedule 2 narcotic drug controlled substance in violation of Title 21 United States Code Section 41(a) (1) and Title 18 United States Code Section 2."

As you know, Robert O'Brien has pleaded guilty

7

## Charge of the Court

to that count according to his testimony and he no longer is a defendant and as you also know there is no charge against Carlos Fayad in that count. Only Paula Dallal is involved in Count 1 which charges the crime that allegedly occurred on March 7, 1975.

Count 2 of the indictment charges: "On or about the 30th day of April, 1975, within the Eastern District of New York, the defendants Robert O'Brien, Paula Dallal and Carlos Fayad, also known as Carlos Forero, did knowingly and intentionally distribute approximately 28 grmas of cocaine hydrochloride, a Schedule 2 narcotic drug controlled substance in violation of Title 21, United States Code Section 841(a)(1) and Title 18, United States Code, Section 2."

Now, the first of the two sections of the code, Section 841(a)(1) of Title 18 reads in pertinent part that: "...it shall be unlawful for any person knowingly or intentionally to distribute a controlled substance." And listed in Schedule 2 is cocaine.

The second statute involved in both of these counts is Section 2 of Title 18 which is the so-called aiding and abetting section. That provides that: "Whoever commits an offense against the



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## Charge of the Court

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United States, or aids, abets, counsels, commands,

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induces, or procures its commission, is punishable

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as a principal."

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"Whoever willfully causes an act to be done

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which is directly performed by him or another would

7

be an offense against the United States, is punishable

8

as a principal."

9

The central elements of the crime in each

10

count must be proven beyond a reasonable doubt are

11

as follows: 1, the act of distributing cocaine as

12

alleged; 2, that such distribution was done knowingly

13

and intentionally.

14

Now, Count 3 of the indictment charges:

15

"On or about the 21st day of May, 1975, within the

16

Eastern District of New York, the defendants Robert

17

O'Brien and Carlos Fayad, also known as Carlos Forero,

18

did knowingly and intentionally possess with intent

19

to distribute approximately 221 grams of cocaine

20

hydrochloride, a Schedule 2 narcotic drug controlled

21

substance." That is in violation of Title 21,

22

United States Code, Section 841(a)(1) and Title 18,

23

United States Code, Section 2, the section which I

24

have read to you. Only Section 841(a) is slightly

25

different as far as this count is concerned.

Charge of the Court

Section 841(a)(1) reads in pertinent part:

"...it shall be unlawful for any person knowingly or intentionally to distribute or possess with intent to distribute a controlled substance." As we have indicated, Schedule 2 lists cocaine.

This count also charges a violation of Section 2 of Title 18 which I heretofore read to you, which is the aiding and abetting section.

The central elements of the crime which must be proven beyond a reasonable doubt on this count are as follows: 1, the act of possessing cocaine as alleged; 2, that the accused knowingly and intentionally possessed the same; 3, that the accused possessed the same with intent to distribute as alleged.

Now, insofar as aiding and abetting is concerned, let me give you further instructions with respect to that. Again, Section 2 of Title 18 of the United States Code provides that: "Whoever commits an offense against the United States or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal.

"Whoever wilfully causes an act to be done, which is directly performed by him or another would be offense against the United States, is punishable



10 1 as a principal."

2  
3 The guilt of a defendant may be established  
4 without proof that the accused personally did every  
5 act constituting the offense charged.

6 In other words, every person who wilfully  
7 participates in the commission of a crime may be found  
8 guilty of that offense. Participation is wilful  
9 if done voluntarily and intentionally, and with a  
10 specific intent to do something the law forbids, or  
11 with a specific intent to further or do something  
12 the law requires to be done; that is to say, with  
13 bad purpose either to disobey or to disregard the  
14 law.

15 (continued next page)  
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## Charge of the Court

1  
2 In order to aid and abet another to commit a  
3 crime it is necessary that the accused wilfully assoc-  
4 iate himself in some way with the criminal venture,  
5 and wilfully participate in it as he would in some-  
6 thing he wishes to bring about; that is to say, that  
7 he wilfully seek by some act or omission of his to  
8 make the criminal venture succeed.

9 An act or omission is wilfully done if done  
10 voluntarily and intentionally and with the specific  
11 intent to do something the law forbids or with the  
12 specific intent to fail to do something the law requires  
13 to be done; that is to say, with bad purpose either  
14 to disobey or to disregard the law.

15 You of course may not find any defendant guilty  
16 unless you find beyond a reasonable doubt that  
17 every element of the offense as defined in these  
18 instructions was committed by some person or persons,  
19 and that the defendant participated in its commission.

20 Mere presence at the scene of the crime and  
21 knowledge that a crime is being committed are not  
22 sufficient to establish that the defendant aided  
23 and abetted the crime, unless you find beyond a  
24 reasonable doubt that the defendant was a participant  
25 and not merely a knowing spectator.



## Charge of the Court

Count Four of the indictment reads as follows:

"On or about and between the 7th day of March, 1975 and the 21st day of May 1975, within the Eastern District of New York, the defendants Robert O'Brien, Paula Dallal, and Carlos Fayad, also known as Carlos Forero, did knowing and intentionally combine and conspire to distribute quantities of cocaine hydrochloride, a Schedule 2 narcotic drug controlled substance, in violation of Title 21, United States Code, Section 841(a)(1), and Title 21, United States Code, Section 846.

I have heretofore read to you Section 841(a)(1) of Title 21 of United States Code referred to in this count. The section which is specifically alleged to have been violated in this count is Section 846 of Title 21 which reads in pertinent part:

"Any person who attempts to conspire to commit any offense defined in the foregoing Section 841, is in violation of the Code."

The following are the essential elements which are required to be proven beyond a reasonable doubt in order to establish the offense of conspiracy alleged in the indictment: One, that there was an agreement or conspiracy between two or more persons to violate

## Charge of the Court

1 the law as charged in the indictment; two, that the  
2 conspiracy described in the indictment was wilfully  
3 formed and existed at or about the time alleged;  
4 three, that the conspiracy was so wilfully formed and  
5 existing for the purpose of distributing a quantity  
6 of cocaine hydrochloride as charged; four, that the  
7 accused wilfully became a member of the conspiracy;  
8 five, that one of the conspirators thereafter knowingly  
9 committed an overt act at or about the time and place  
10 alleged; six, such overt act was knowingly done in  
11 furtherance of the object of the conspiracy as  
12 charged; and seven, that the accused was knowingly and  
13 wilfully a member of the conspiracy with the intent  
14 to further one of its objectives.  
15

16 If the jury should find beyond a reasonable  
17 doubt from the evidence in the case that existence  
18 of the conspiracy charged in the indictment has been  
19 proved, and that during the existence of the conspiracy  
20 an overt act was knowingly done by one or more of the  
21 conspirators in furtherance of some object or purpose  
22 of the conspiracy, then proof of the conspiracy  
23 offense charged is complete, and it is complete as to  
24 every person found by the jury to have been wilfully  
25 a member of the conspiracy at the time the overt act



## Charge of the Court

was committed.

A conspiracy is a combination of two or more persons by concerted action, to accomplish some unlawful purpose. So, a conspiracy is a kind of partnership in criminal purposes, in which each member became the agent of the other member. The gist of the offense is a combination or a agreement to disobey, or to disregard the law.

Mere similarity of conduct among various persons, and the fact they may have associated with each other, and may have assembled together and discussed common aims and interests, does not necessarily establish proof of the existence of a conspiracy.

However, the evidence in the case need not show that the members entered into any express or formal agreement, or that they directly, by word spoken or in writing, stated between themselves that their object or purpose was to be, or the details thereof, or the means by which the object or purpose was to be accomplished. What the evidence in the case must show beyond a reasonable doubt, in order to establish proof that a conspiracy existed, is that the members in some way or manner, or through some contrivance, positively or tacitly came to a mutual understanding

## Charge of the Court

to try to accomplish a common and unlawful plan.

The evidence in the case need not establish that all the means or methods set forth in the indictment were agreed upon to carry out the alleged conspiracy; nor that all means or methods which were agreed upon, were actually used or put into operation; nor that all of the persons charged to have been members of the alleged conspiracy were such. What the evidence in the case must establish beyond a reasonable doubt is that the alleged conspiracy was knowingly formed, and that one or more of the means or methods described in the indictment were agreed upon to be used, in an effort to effect or accomplish some object or purpose of the conspiracy, as charged in the indictment; and that two or more persons, including one or more of the accused, were knowingly members of the conspiracy, as charged in the indictment.

In your consideration of the evidence in the case as to the events of conspiracy, you should first determine whether or not the conspiracy existed, as alleged in the indictment. If you conclude that the conspiracy did exist, you should next determine whether or not each of the accused wilfully became a member of



## Charge of the Court

the conspiracy.

If it appears beyond a reasonable doubt from the evidence in the case that the conspiracy alleged in the indictment was wilfully formed, and that a defendant lawfully became a member of the conspiracy either at its inception or afterwards, and that there- after one or more of the conspirators committed one or more overt acts in furtherance of some object or purpose of the conspiracy, then there may be a conviction even though the conspirators may not have succeeded in accomplishing their common object or purpose and in fact may have failed in doing so.

The extent of any defendant's participation is not determinative of his guilt or innocence. A defendant may be convicted as a conspirator even though he may have played only a minor part in the conspiracy.

An overt act is any act knowingly committed by one of the conspirators, in an effort to effect or accomplish some object or purpose of the conspiracy. The overt act need not be criminal in nature, if considered separately and apart from the conspiracy. It may be as innocent as the act of a man walking across the street, or driving an automobile, or using

## Charge of the Court

7 1 an telephone. It must, however, be an act which  
2 follows and tends towards accomplishment of the plan  
3 or scheme, it must be knowingly done in furtherance  
4 of some object or purpose of the conspiracy charged  
5 in the indictment.  
6

7 One may become a member of the conspiracy  
8 without full knowledge of all the details of the  
9 conspiracy. On the other hand, a person who has no  
10 knowledge of a conspiracy, but happens to act in a  
11 way which furthers some object or purpose of the  
12 conspiracy, does not thereby become a conspirator.

13 Before the jury may find the defendants or  
14 any other person has become a member of the conspiracy,  
15 the evidence in the case must show beyond a reasonable  
16 doubt that the conspiracy was knowingly formed, and  
17 that the defendants or other person who is claimed to  
18 have been a member willfully participated in the  
19 unlawful plan, with the intent to advance or further  
20 some object or purpose of the conspiracy.

21 To act or participate wilfully means to act or  
22 to participate voluntarily or intentionally and with  
23 specific intent to do something the law forbids. That  
24 is to say, to act or to participate with the bad  
25 purpose either to disobey or to disregard the law.



## Charge of the Court

8 1  
2 So, if a defendant or any other person, with  
3 understanding of the unlawful character of the plan,  
4 knowingly encourages, advises or assists, for the  
5 purpose of furthering the undertaking or scheme, he  
6 thereby becomes a wilful participant, i.e., a con-  
7 spirator.

8 One who wilfully joins in an existing conspiracy  
9 is charged with the same responsibility as if he had  
10 been one of the originators or instigators of the  
11 conspiracy.

12 In determining whether a conspiracy existed,  
13 the jury should consider the actions and the declara-  
14 tions of all the alleged participants. However, in  
15 determining whether a particular defendant was a  
16 member of a conspiracy, if any, the jury should consider  
17 only his acts and statements. He cannot be bound by  
18 the acts and declarations of other participants until  
19 it is established that a conspiracy existed, and that  
20 he was one of its members.

21 Whenever it appears beyond a reasonable doubt  
22 from the evidence in the case that a conspiracy  
23 existed, and that a defendant was one of the members,  
24 then the statements thereafter knowingly made and the  
25 acts knowingly done, by any person likewise found to

1  
2 be a member, may be considered by the jury as evidence  
3 in the case as to the defendant found to have been a  
4 member, even though the statements and acts made may  
5 have occurred in the absence and without the know-  
6 ledge of the defendant, provided such statement and  
7 acts were knowingly made and done during the contin-  
8 uancy of such conspiracy, and in furtherance of some  
9 object or purpose of the conspiracy.

10 Otherwise, any admission or incriminatory state-  
11 ment made or act done outside of court, by one person,  
12 may not be considered as evidence against any person  
13 who is not present and did not hear the statement made  
14 or see this act done.

15 Therefore, statements of any conspirator which  
16 are not in furtherance of the conspiracy or made before  
17 its existence or after its termination may be con-  
18 sidered as evidence only against the person making  
19 them.

20 The indictment charges a conspiracy among the  
21 defendants Dallal and Fayad and also O'Brien, all of  
22 whom are named in the indictment as co-conspirators.  
23 A person cannot conspire with himself or herself and  
24 therefore you cannot find any of the defendants guilty  
25 unless you find beyond a reasonable doubt that he



## Charge of the Court

1099

1  
2 or she participated in the conspiracy as charged with  
3 at least one other person. With this qualification  
4 you may find both of the defendants guilty or one of  
5 the defendants guilty and one of the defendants not  
6 guilty, or both not guilty, all in accordance with  
7 these instructions and the facts you find.

8 (Continued on next page.)  
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25

MP/JCI  
5AM/3

2           An act is done knowingly if done voluntarily  
3 and intentionally and not because of mistake or  
4 accident or other innocent reason.

5           The purpose of adding the word knowingly was  
6 to insure that no one would be convicted for an act  
7 done because of mistake or accident or innocent  
8 reason.

9           An act is done willfully if done voluntarily  
10 and intentionally and with a specific intent to do  
11 something the law forbids, that is to say, with bad  
12 purpose either to disobey or to disregard the law.

13           Normally, intent may not be proved directly,  
14 because there is no way of fathoming or scrutinizing  
15 the operation of the human mind. But you may infer  
16 a defendant's knowledge and intent from the sur-  
17 rounding circumstances. You may consider any state-  
18 ment made and done or omitted by a defendant, and  
19 all other facts and circumstances in evidence which  
20 indicate his state of mind. It is ordinarily reason-  
21 able to infer that a person intends the natural  
22 and probably consequences of acts knowingly done or  
23 knowingly omitted.

24           Now, on the question of knowledge, ~~lfulness~~  
25 and intent the law permits evidence to be introduced



1  
2 showing similar, prior, subsequent or contemporaneous  
3 acts or conduct and the Government in this case  
4 points to the admission by the defendant Dallal of  
5 a prior introduction by her of a buyer to Mr. O'Brien  
6 and statements it claims were made by the defendant  
7 Dallal to the undercover special agent offering to  
8 sell him other narcotics on his first visit to her  
9 apartment on March 7, 1975, and later claiming that  
10 she and her room-mate made some 60 other sales of  
11 narcotics. If you find beyond a reasonable doubt  
12 such to be established in any one or all instances  
13 you may consider any such established proof on the  
14 issue of the defendant's knowledge, willfulness and  
15 intent to commit the offenses charged in the indictment  
16 and on the question of lack of innocence, accident  
17 or mistake, and also on the issue of entrapment.

18 The full instructions on these aspects of the  
19 law are as follows: On the question of knowledge,  
20 willfulness and intent, the fact that the accused  
21 may have committed another offense at some time is  
22 not any evidence of proof whatever that at another  
23 time the accused committed the offense charged in the  
24 indictment even both both offenses are of a like  
25 nature. Evidence as to an alleged earlier offense  
of a like nature may not therefore be considered by

## Charge of the Court

1102

the jury, in determining whether the accused did the act charged in the indictment. Nor may such evidence be considered for any other purpose whatever, unless the jury first finds that other evidence in the case, standing alone, establishes beyond a reasonable doubt that the accused did the act charged in the indictment leaving aside only the question of whether he or she did it knowingly, intentionally and willfully.

If the jury should find beyond a reasonable doubt from the other evidence in the case that the accused did the act charged in the indictment then the jury may consider evidence as to an alleged earlier or later offense of a like nature, in determining the state of mind, knowledge, or intent with which the accused did the act charged in the indictment. Where all the elements of an alleged earlier offense of a like nature are established by evidence which is clear and conclusive, the jury may, but is not obliged to, draw the inference and find that in doing the act charged in the indictment the accused acted willfully, knowingly, and with specific intent, and not because of mistake or accident or other innocent reason.

(Continued next page.)



## Charge

THE COURT: (Continuing)

The defendant asserts that she was a victim of entrapment as to the offense charged in the indictment.

Where a person has no previous intent or purpose to violate the law, but is induced or persuaded by law enforcement officer or their agents to commit a crime, she is a victim of entrapment and the law as a matter of policy forbids her conviction in such a case.

On the other hand, where a person already has the readiness and willingness to break the law, the mere fact that government agents provide what appears to be a favorable opportunity is no entrapment. For example, when the government suspects that a person is engaged in the illicit sale of narcotics, it is not entrapment for a government agent to pretend to be someone else and to offer, either directly or through an informer or other decoy, to purchase narcotics from the suspected person.

If, then, the jury should find beyond a reasonable doubt from the evidence in the case that, before anything at all occurred respecting the alleged offense involved in this case, the defendant was ready and willing to commit crimes such as are charged in the indictment, whenever opportunity was afforded and that

## Charge

1 government officers or their agents did no more than  
2 offer the opportunity, then the jury should find that  
3 the defendant is not a victim of entrapment.  
4

5 On the other hand, if the evidence in the case  
6 should leave you with a reasonable doubt whether the  
7 defendant had the previous intent or purpose to commit  
8 an offense of the character charged, apart from the  
9 inducement or persuasion of some officer or agent of  
10 the government, then it is your duty to find her not  
11 guilty.

12 The question of entrapment involves two issues.  
13 The first issue is whether the defendant was led or  
14 induced to commit the crime by anyone acting for the  
15 government. That is, did the government initiate the  
16 criminal transaction? On this issue the defendant  
17 has the burden of proof. She does not have to prove  
18 it beyond a reasonable doubt but she must prove it by  
19 a fair preponderance of the evidence. That is, she  
20 must satisfy you that it is more likely than not that the  
21 government initiated the criminal transaction involved  
22 in this case. If you do not find such inducement then  
23 there was no entrapment, but if you do find such  
24 inducement then you must consider the second issue.

25 The second issue is whether the defendant was  
ready and willing to commit the crime without



## Charge

persuasion. This is sometimes expressed as an issue of whether he had a propensity to commit the crime. On this issue the government has the burden of proof and it must prove it beyond a reasonable doubt.

Defendant Dallal produced witnesses who testified that she had a reputation for being gullible and naive. As I have stated to you, there is no burden on the defendant to produce any evidence at all. The burden is on the prosecution to prove beyond a reasonable doubt that said defendant committed the acts with which she is charged knowingly, intentionally and wilfully in the contexts heretofore discussed based on all the evidence in the case, including such reputation testimony, and that based on all such evidence she was not entrapped as just discussed. If the prosecution has done this, then that is sufficient and you should not acquit such defendant merely because you believe she had a reputation for being gullible and naive.

Statement and arguments of counsel are not evidence in the case, unless made as an admission or stipulation of fact. When the attorneys on both sides stipulate or agree as to the existence of a fact, you must, unless otherwise instructed, accept

## Charge

the stipulation as evidence, and regard that fact as proved.

The Court may take judicial notice of certain facts or events. When the Court declares it will take judicial notice of some fact or event, you may accept the Court's declaration as evidence, and regard as proved the fact or event which has been judicially noticed, but you are not required to do so since you are the sole judge of the facts.

Unless you are otherwise instructed, the evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them; and all exhibits received in evidence, regardless of who may have produced them and all facts which may have been admitted or stipulated; and all facts and events which may have been judicially noticed; and all applicable presumptions stated in these instructions.

Any evidence as to which an objection was sustained by the Court, and any evidence ordered stricken by the Court, must be entirely disregarded.

Evidence does include, however, what is brought out from witnesses on cross examination as well as what is testified to on direct examination.

Unless you are otherwise instructed, anything



## Charge

5 1  
2 you may have seen or heard outside the courtroom is  
3 not evidence, and must be entirely disregarded.

4 You are to consider only the evidence in the  
5 case and your verdict is to be based on the evidence  
6 only. But in your consideration of the evidence you  
7 are not limited to the bald statements of the  
8 witnesses. In other words, you are not limited  
9 solely to what you see and hear as the witnesses  
10 testify. You are permitted to draw, from facts which  
11 you find have been proved, such reasonable inferences  
12 as you feel are justified in the light of experience.

13 Inferences are deductions or conclusions which  
14 reason and common sense lead the jury to draw from  
15 facts which have been established by the evidence in  
16 the case.

17 If a lawyer asks a witness a question which  
18 contains an assertion of fact you may not consider the  
19 assertion as evidence of that fact. The lawyers'  
20 statement are not evidence.

21 Evidence relating to any statement, or act or  
22 omission, claimed to have been made or done by a  
23 defendant outside of court, and after a crime has been  
24 committed, should always be considered with caution and  
25 weighed with great care; and all such evidence should

## Charge

1  
2 be disregarded entirely, unless the evidence in the  
3 case convinces the jury beyond a reasonable doubt that  
4 the statement or act or omission was knowingly made or  
5 done.

6 A statement or act or omission is "knowingly"  
7 made or done, if done voluntarily and intentionally,  
8 and not because of mistake or accident or other  
9 innocent reason.

10 In determining whether any statement or act or  
11 omission claimed to have been made by a defendant out-  
12 side of court, and after a crime has been committed,  
13 was knowingly made or done, the jury should consider  
14 the age, sex, training, education, occupation, and  
15 physical and mental condition of the defendant, and  
16 his treatment while in custody or under interrogation,  
17 as shown by the evidence in the case; and also all  
18 other circumstances in evidence surrounding the making  
19 of the statement or act or omission, including whether,  
20 before the statement or act or omission was made or  
21 done, the defendant knew or had been told and understood  
22 that he was not obligated or required to make or do the  
23 statement or act or omission claimed to have been made  
24 or done by him; that any statement or act or omission  
25 which he might make or do could be used against him in



## Charge

1  
2 court; that he was entitled to the assistance of counsel  
3 before making any statement, either oral or in writing,  
4 or before doing any act or omission; and that if he  
5 was without money or means to retain counsel of his  
6 own choice, an attorney would be appointed to advise  
7 and represent him free of cost or obligation.

8 If the evidence in the case does not convince  
9 beyond a reasonable doubt that a confession was made  
10 voluntarily and intentionally you should disregard  
11 it entirely. On the other hand, if the evidence in  
12 the case does show beyond a reasonable doubt that a  
13 confession was in fact voluntarily and intentionally  
14 made by a defendant, you may consider it as evidence  
15 in the case against the defendant who voluntarily and  
16 intentionally made the confession.

17 You, as jurors, are the sole judges of the  
18 credibility of the witnesses and the weight their  
19 testimony deserves.

20 You should carefully scrutinize all the testi-  
21 mony given, the circumstances under which each witness  
22 has testified, and every matter in evidence which  
23 tends to show whether a witness is worthy of belief.  
24 Consider each witness's intelligence, motive and state  
25 of mind, and demeanor and manner while on the stand.

## Charge

Consider the witness's ability to observe the matters as to which he has testified and whether he impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure or recollection is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

An accomplice is one who unites with another person in the commission of a crime, voluntarily and with common intent. An accomplice does not become incompetent as a witness because of participation in the crime charged. On the contrary, the testimony of



## Charge

an accomplice alone, if believed by the jury, may be of sufficient weight to sustain a verdict of guilty, even though not corroborated or supported by other evidence. However, the jury should keep in mind that such testimony is always to be received with great caution and weighed with great care.

You should never convict a defendant upon the unsupported testimony of an alleged accomplice, unless you believe that unsupported testimony beyond a reasonable doubt.

The testimony of a witness may be discredited or impeached by showing that he previously made statements which are inconsistent with his present testimony. The earlier contradictory statements are admissible only to impeach the credibility of the witness, and not to establish the truth of these statements. It is the province of the jury to determine the credibility, if any, to be given the testimony of a witness who has been impeached.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness' testimony in other particulars; and you may reject all the testimony of that witness or give it such credibility as you

## Charge

may think it deserves.

The testimony of a witness may be discredited or impeached by showing that the witness has been convicted of a felony, that is, of a crime punishable by imprisonment for a term of years. Prior conviction does not render a witness incompetent to testify, but is merely a circumstance which you may consider in determining the credibility of the witness. It is the province of the jury to determine the weight to be given to any prior conviction as impeachment.

A defendant who wishes to testify, however, is a competent witness; and the defendant's testimony is to be judged in the same way as that of any other witness.

Now, there has been testimony here to the previous good character of the defendant. You should consider such evidence of character together with all the other facts with respect to the guilt or innocence of the defendant. Evidence of good character may in itself create a reasonable doubt where without such evidence no reasonable doubt would have existed. But if on all the evidence you are satisfied beyond a reasonable doubt that the defendant is guilty, a showing that he had previously enjoyed a reputation of



## Charge

1113

1  
2 good character, does not justify or excuse the offense  
3 and you should not acquit a defendant merely because you  
4 believe he is a person of good repute.

5 The testimony of a character witness is not to  
6 be regarded by you as expressing the witness's personal  
7 opinion of the defendant's character, nor is it to be  
8 taken by you as the witness's opinion as to the guilt  
9 or innocence of the defendant. The guilt or innocence  
10 of the defendant is for you and you alone to determine.

11 It is the duty of the attorney on each side of  
12 a case to object when the other side offers testimony  
13 or other evidence which the attorney believes is not  
14 properly admissible. You should not show prejudice  
15 against an attorney or his client because the attorney  
16 has made objections.

17 Upon allowing testimony or other evidence to be  
18 introduced over the objection of an attorney, the  
19 Court does not, unless expressly stated, indicate any  
20 opinion as to the weight or effect of such evidence.  
21 As stated before, the jurors are the sole judges of  
22 the credibility of all witnesses and the weight and  
23 effect of all evidence.

24 When the Court has sustained an objection to a  
25 question addressed to a witness the jury must disregard

## Charge

the question entirely, and may draw no inference from the wording of it, or speculate as to what the witness would have said if he had been permitted to answer any question.

The fact that the Court has asked one or more questions of a witness for clarification or admissibility is not to be taken by you in any way as indicating that the Court has any opinion as to the guilt or innocence of the defendant in this case and you are to draw no such inference therefrom. That determination is up to you and you alone based on all the facts in the case and the applicable law in these instructions.

You are here to determine the guilt or innocence of the accused from the evidence in the case. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the accused, you should so find, even though you may believe one or more other persons are guilty. But if any reasonable doubt remains in your minds after impartial consideration of all the evidence in the case, it is your duty to find the accused not guilty.

The verdict must represent the considered



13

## Charge

1 judgment of each juror. In order to return a verdict,  
2 it is necessary that each juror agree thereto. Your  
3 verdict must be unanimous.  
4

5 It is your duty, as jurors, to consult with one  
6 another, and to deliberate with a view to reaching an  
7 agreement, if you can do so without violence to  
8 individual judgment. Each of you must decide the case  
9 for himself but do so only after an impartial consider-  
10 ation of the evidence in the case with your fellow  
11 jurors. In the course of your deliberations, do not  
12 hesitate to reexamine your own views, and change your  
13 opinion, if convinced it is erroneous. But do not  
14 surrender your honest conviction as to the weight or  
15 effect of evidence, solely because of the opinion of  
16 your fellow jurors, or for the mere purpose of return-  
17 ing a verdict.

18 If any reference by the Court or by counsel to  
19 matters of evidence does not coincide with your own  
20 recollection, it is your recollection which should  
21 control during your deliberations.

22 The punishment provided by law for the offense-  
23 offenses charged in the indictment is a matter exclu-  
24 sively within the province of the Court, and should  
25 never be considered by the jury in any way, in

1  
2 arriving at an impartial verdict as to the guilt or  
3 innocence of the accused.

4 Remember at all times, you are not partisans.  
5 You are judges -- judges of the facts. Your sole  
6 interest is to seek the truth from the evidence in  
7 the case.

8 There is nothing peculiarly different in the way  
9 a jury should consider the evidence in a criminal case,  
10 from that in which all reasonable persons treat any  
11 question depending upon evidence presented to them.  
12 You are expected to use your good sense; consider  
13 the evidence in the case for only those purposes for  
14 which it has been admitted and give it a reasonable  
15 and fair construction, in the light of your common  
16 knowledge of the natural tendencies and inclination  
17 of human beings.

18 If the accused be proved guilty beyond  
19 reasonable doubt say so. If not so proved guilty,  
20 say so.

21 You must render a verdict with respect to each  
22 of the four counts in the indictment that I have  
23  
24  
25



## Charge

described to you.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by a vailiff, signed by your foreman, or by one or more members of the jury. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing and the Court will never communicate with any member of the jury on any subject touching the merits of the case, otherwise than in writing, or orally here in open Court.

You will note from the oath about to be taken by the bailiffs that they too, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case

Bear in mind also that you are never to reveal to any person -- not even to the Court -- how the jury stands, numerically or otherwise, on the question of the guilt or innocence of the accused, until after you have reached an unanimous verdict.

If you find yourselves at an impasse, which I hope you will not find, then you come in and say we are hopelessly deadlocked. That is only if you reach that stage. You never might reach it and you should

## Charge

not say how the jury stands numerically or otherwise. I am going to ask you to retire to the jury room for five minutes or so while I discuss certain things with the attorneys. After that you will be recalled to get final instructions.

The alternate juror will be discharged and at that point you may begin discussing the case but not before then. Do not discuss the case during this brief recess.

(The jury excused from the courtroom at 1:15 p.m.)

(Out of the hearing of the jury.)

MR. BEHAR: The only objection, your Honor, is that in giving the instructions on the testimony of the defendant I notice your Honor just stated that the defendant is a witness competent to testify like any other and it has been my experience that the following statement in that charge is that the jury can regard each personal interest that the defendant has in the outcome of this case.

THE COURT: If you had so requested it I would have given that charge. You didn't request it.

MR. BEHAR: My mistake, your Honor -- I thought it was reasonably standard.



17

1

## Charge

2

THE COURT: It might not be proper at this

3

stage.

4

MR. KAPLAN: When the Court was charging the

5

jury on the topic of unlawful entrapment your Honor

6

spoke of the burden of proof being on the defendant

7

at one point. I think --

8

THE COURT: That is the initial thing by a

9

preponderance of the evidence.

10

MR. KAPLAN: It is my understanding that at no

11

time does the defendant ever have a burden of proof.

12

THE COURT: On the issue of entrapment?

13

MR. KAPLAN: Respectfully, my understanding is

14

he has no burden of proof. He has a burden of

15

asserting the defense and after that the Government

16

has a burden of proof showing predisposition.

17

MR. BEHAR: I think Mr. Kaplan misstates the

18

case.

19

THE COURT: U.S. against Braver, 2d Circuit,

20

certiorari denied and approved the trial court's

21

instructions --

22

MR. KAPLAN: All right, did you charge a 2d

23

Circuit case?

24

THE COURT: Yes.

25

MR. KAPLAN: All right, one thing more, you

## Charge

3 1  
2 marshalled some evidence as to the evidence and proof  
3 elicited again on the topic of entrapment as to showing  
4 a possible predisposition.

5 I ask you to counter that by so marshalling of  
6 evidence indicating there is no predisposition to  
7 commit the crime charged.

8 THE COURT: No.

9 MR. KAPLAN: One thing more --

10 THE COURT: I marshalled a portion of the  
11 Government's contentions to illustrate what I was  
12 talking about but I labelled it as such.

13 MR. KAPLAN: I ask the Court to charge if the  
14 evidence against the defendant is equally consistent  
15 with innocence as with guilt and the jury must adopt  
16 the construction in favor of the innocence of the  
17 defendant.

18 THE COURT: I think that was encompassed in  
19 my charge. The evidence is equally balanced and that  
20 is for the jury to decide.

21 MR. TIRELLI: I felt it wasn't clear to the  
22 jury that they could find one defendant guilty and  
23 another defendant innocent.

24 Maybe I didn't properly submit it.

25 THE COURT: If there is any doubt about that I



19

1

Charge

2

will be glad to take that up with the jurors.

3

MR. TIRELLI: You did say it but I was thinking that maybe it was not clear enough.

4

5

THE COURT: You want me to say you can find either of the defendants guilty or one defendant guilty and one not guilty?

6

7

8

MR. KAPLAN: I object to the reiteration.

9

THE COURT: I agree. If he wants it done now, and if you both want it done I will do it.

10

11

MR. KAPLAN: I do not.

12

MR. TIRELLI: I bow to the superior wisdom of the two of you.

13

14

MR. KAPLAN: That is all.

15

THE COURT: All right. bring the jury in.

16

(The jury entered the courtroom at 1:20 p.m.)

17

THE COURT: All right, the alternate juror is excused with the thanks of the Court.

18

19

If you have anything in the jury room now please retrieve it now and take your card and have your lunch down at the jury room across the hall and check out for the day. Thank you very much for your services.

20

21

22

23

24

As you saw it became necessary to use one but not both alternates.

25

## Charge

Now, the other jurors, I am going to let the attorneys go to lunch now and if you have any questions or notes please hold them to about 2:20 p.m. and it will be your responsibility to preside over the deliberations, Madame Forelady, as I have said, and make sure that all twelve jurors are present in the discussions that you have.

(The Clerk thereupon swore in the Marshalls.)

THE COURT: All right, now, Ladies and gentlemen, you may discuss the case.

(At 1:22 p.m. the jury withdrew from the courtroom.)

(Continued next page.)



MINUTES OF SENTENCE AND MOTION (p.103a-115a)

3 103a

THE CLERK: Criminal cause for sentencing,

U.S.A. vs. Paula Dallal.

MR. KAPLAN: Good morning, your Honor.

THE COURT: Is there any reason why we shouldn't --

MR. KAPLAN: There is an outstanding motion for a new trial. Would your Honor rule on that, and may I be heard?

THE COURT: You may be heard.

MR. KAPLAN: Your Honor, my application is on behalf of a new trial based as indicated on my moving papers in regard to the defendant's burden proof in regard to a defense of entrapment. I believe although I haven't seen that portion of the minutes yet. I believe your Honor in charging the jury as to entrapment used the words, or at least the phrases and thoughts of the United States against Braver, which is cited 450 Fed 2d, 799, Second Circuit case in 1971.

With your Honor's kind permission, may I read what appears on page 805 of that case? Would your Honor consider this in supplement -- and supplementary to my motion papers, said the Court through Judge Feinberg: "In light of all this, we suggest that it would be preferable for the District Courts of this circuit to use an entrapment charge that does not give to the jury two ultimate factual issues to decide on

1 two different burdens of persuasion imposed upon two  
2 different parties. While we do not specifically  
3 define this preferable charge, we suggest that there  
4 be no reference to 'burden' or 'burden of proof' or  
5 'preponderance of evidence,' in describing a defen-  
6 dant's obligation.

7 "In explaining the burden of proof on entrapment,  
8 it will be enough to tell the jury if it finds some  
9 evidence of Government initiation of the illegal  
10 conduct, the Government has to prove beyond a  
11 reasonable doubt that the defendant was ready and  
12 willing to commit the crime."

13 In view of that, in view of your Honor's charge,  
14 and in view of my exception to that portion of the  
15 charge, I ask under Rule 33 that Miss Dallal be  
16 granted a new trial. May I say further that I  
17 received Mr. Behar's answering memorandum, and may I  
18 further say in my affidavit which took the place of  
19 the memorandum, it should be in memorandum form, I  
20 quote U.S.A. vs. Watson, 489 Fed 2d, 504, a 1973 case.

21 If my memory serves me correctly, that was  
22 decided in December 1973, which was three months  
23 subsequent to the September '73 case cited by Mr. Behar  
24 in relation to this entrapment charge. I believe the  
25 Third Circuit held in effect what I had just taken out



1 of the Braver case.

2 Further, your Honor, in view of that, I would  
3 ask that your Honor grant Miss Dallal a new trial.

4 MR. BEHAR: As stated in the Government's brief  
5 and just for the moment addressing myself to  
6 Mr. Kaplan's last point, the Watson approach has been  
7 specifically not adopted by the Second Circuit; and  
8 the Second Circuit has consistently -- and as late as  
9 the beginning of 1974 and well into 1974 held that  
10 a bifurcated approach on the entrapment question is one  
11 that is to be considered in this circuit, but I think  
12 more importantly, your Honor, going to the initial  
13 issue that I think is raised by Mr. Kaplan's motion,  
14 as the Government did point out in its brief, the  
15 Second Circuit has consistently held that where there  
16 has been substantial evidence of propensity to commit  
17 this crime in the past and an entrapment charge need  
18 not be given to the jury at all; and in this particular  
19 case, your Honor, we don't have substantial evidence.  
20 We have absolute and total evidence that Miss Dallal  
21 had a propensity to commit the crime, and in view of  
22 that, in view of the Second Circuit holding in such  
23 cases an entrapment charge need not be given at all.  
24 The entrapment charge in this case was purely gra-  
25 tuitous.

1 Secondly, again as the Government points out  
2 in its brief, the Second Circuit has never held that  
3 a charge containing the words, "The defendant shall  
4 have the burden of proof," or something to that extent,  
5 regarding the defendant's burden on proving inducement.  
6 The Second Circuit has never held that such a trial  
7 was error. In fact, in Braver, they did not hold that  
8 such a charge was error, and two years after Braver  
9 the Second Circuit reaffirmed its position that the  
10 defendant does have a certain burden and they use  
11 the words "burden," in proving inducement in an  
12 entrapment issue in a case; but I think most impor-  
13 tantly, the entrapment charge need not be given in  
14 this case at all. If by any stretch of the imagination  
15 error was committed by using the word "burden," which  
16 the Second Circuit has not held, so far, the error  
17 was meaningless and harmless.

18 MR. KAPLAN: Your Honor, just a few more words  
19 on Mr. Behar's remarks. I don't understand in view  
20 of what I've read to the Court under the Braver case,  
21 the Braver case was very emphatic.

22 THE COURT: He's right, there has been no  
23 Second Circuit case, to my knowledge, that says hence-  
24 forth the courts of this circuit shall not use a  
25 bifurcated approach. In this case I think the



1 Government is right. I think Miss Dallal -- I think  
2 I leaned over backwards in her favor -- all the  
3 evidence in this case for propensity to commit this  
4 crime was as the Government says, overwhelming. It  
5 wasn't a question here of someone going in and putting  
6 the idea in her mind. When you put the defendant on  
7 the witness stand she just about admitted everything.

8 I understand your point. I've understood your  
9 point right from the start but I don't think it's  
10 well taken.

11 MR. KAPLAN: Respectfully except, your Honor.

12 THE COURT: I'll have to deny your motion.

13 MR. KAPLAN: No other legal cause exists other  
14 than whatever motions were made during the course of  
15 the trial directed towards the evidence or directed  
16 towards the burden, other than that --

17 THE COURT: I'll reaffirm my rulings on those  
18 questions. Do you wish to proceed to say anything  
19 in her behalf?

20 MR. KAPLAN: Yes, with your Honor's permission.

21 Miss Dallal is 23 years old and she stands  
22 before the Court having been convicted on three counts.  
23 I've read the probation report and the probation report  
24 accurately points out that the agent deems Miss Dallal  
25 the least culpable of the three.

1           Your Honor, what happened with Miss Dallal was  
2 absolutely a series of unfortunate, emotional cir-  
3 cumstances that boggled over, it's circumstances that  
4 will never repeat themselves.

5           First and foremost, she was away for three years,  
6 living in an apartment with a friend. During this  
7 time that she was away, she was engaged to a young man,  
8 to marry. This young fellow died of hepatitis, as  
9 indicated in the probation report. I believe this set  
10 her off somewhat. She became despondent, she became  
11 depressed, probably bordering on a medical depression  
12 that requires hospitalization.

13           At any rate, everything was sort of downhill,  
14 which is pretty sad for a young girl who was 20 years  
15 old at the time. She herself took barbiturates to  
16 make her forget, make her remember the good, forget  
17 the bad. She found herself where it was easy for an  
18 agent or an undercover man or an informant to ask her  
19 if she could get this, the subject of this indictment,  
20 and she was in a position to tell them about somebody.  
21 I wish to point out that Miss Dallal promised drugs,  
22 she never had the stuff herself, surely gained  
23 economically to a very minimum degree, probably a  
24 hundred dollars, at least from the testimony of the two  
25 transcripts.



1 She has a work record that's exemplary, after  
2 leaving high school, as indicated by the probation  
3 report. She's a good worker and she's certainly  
4 most conscientious.

5 Your Honor, of course, presided at the trial  
6 and your Honor heard her testimony and your Honor made  
7 point saying that she admitted everything, and that's  
8 true. There was nothing held back. She didn't begin  
9 to testify to anything that couldn't smack of total  
10 credibility and honesty. She told it just the way  
11 it happened. That, I think your Honor, indicates the  
12 type of person that she is.

13 My affiliation with her during this trial,  
14 during this short stage was consonant with that  
15 character that she was totally upright and totally  
16 contrite.

17 She now lives at home, she has been at home  
18 since early April, late March, and, of course, when  
19 she is at home with her parents, who by the way are  
20 in court now, and with her brother, who is a freshman  
21 in college, learning dentistry.

22 There is no more evidence of barbiturates, no  
23 evidence of the type of acquaintances she found herself  
24 with. Again, she's working steadily, she's working  
25 this very day. She's working now, and your Honor again

1 in regard to her work, her reputation, witnesses --  
2 her co-worker and friends, family -- have known her  
3 since she was a child. They indicated her reputation  
4 in the community even to the extent of her being an  
5 unfortunately somewhat foolish, gullible girl, easily  
6 not a leader, unfortunately, a follower.

7 Your Honor read the letters that were written  
8 that are with the probation report. She and her  
9 parents are in court now. They have suffered because  
10 of this problem. They are honest, hard-working people  
11 and you could well imagine something like this where  
12 a young daughter stands before the Court ready to  
13 be sentenced. It was a torturous time for her mother  
14 who was here every day of the trial.

15 She continues her therapy to this very day.  
16 I believe she goes every day and pays for it out of  
17 her salary, and the therapy is showing remarkable  
18 results. She should continue it.

19 Genuinely, your Honor, I think we have surely  
20 the makings of a good citizen and one that would be  
21 an asset to any community, including the community she  
22 now lives with her family.

23 I ask the Court in view of all that, and in  
24 view of the demeanor of the defendant on the stand,  
25 as your Honor saw her, that hopefully your Honor thinks



1 she has the redeeming qualities that I believe she  
2 has.

3 I ask the Court to give us one chance with the  
4 utter assurance that this will never happen again.  
5 She has to grow up. This is still her formative  
6 years, even though she's 23; just grow up to be a  
7 healthy, happy woman, as I say, an asset to her  
8 community.

9 I'm finished, with just one last observation  
10 and it's somewhat personal, with your Honor's permis-  
11 sion: I was in a happy enough position to see my  
12 daughter off for college and she's not much younger,  
13 a couple of years younger than Paula. I couldn't help  
14 thinking what we are going to face Friday and this was  
15 Wednesday, and, for the grace of God, I have to tell the  
16 Court this, that Paula entered my mind at the time my  
17 daughter boarded the airplane.

18 Again, your Honor, I beseech your Honor to be  
19 merciful here and whatever sentence your Honor has in  
20 mind I ask that he suspend the execution so that we  
21 could sort of start from scratch, start all over again.

22 THE COURT: Do you wish to say anything,  
23 Miss Dallal?

24 THE DEFENDANT: I want to say it will never  
25 happen again. I'm living at home, I'm continuing the

1 therapy, it's helping me a great deal.

2 THE COURT: Mr. Behar?

3 MR. BEHAR: The Government has nothing to say,  
4 your Honor.

5 THE COURT: I don't know what it is, Mr. Kaplan,  
6 about the drug problem in this district, but it is  
7 probably the most serious, that and bank robbery are  
8 the two most serious problems that keep coming up  
9 over and over again in this court, and the young  
10 people, and a lot of older people don't seem to get  
11 the message. This is something that the Court will  
12 not tolerate, and I don't know how else to get the  
13 message across but to impose some kind of punishment.

14 I'm fully aware that the people who suffer from  
15 the punishment most are not the defendants but their  
16 families. I'm a family man myself, I have a daughter  
17 like yours who's just about Miss Dallal's age, and  
18 believe me it hurts me just as it does you or anybody  
19 else to have to find young people in this situation  
20 and have to impose sentence upon them, but if we are  
21 going to let every drug offender who comes into this  
22 court, who is young, walk out of here on probation,  
23 the trap is going to multiply so fast. It's bad enough  
24 as it is but it will multiply that much faster.

25 I recognize the fact that Miss Dallal took the



1 witness stand and for the most part she appeared to  
2 be telling the truth. The jury, however, found that  
3 she was not entrapped into this and I think any other  
4 finding would have been unbelievable in the light of  
5 all of the testimony; and I think she has to pay for  
6 her offense; and believe me, if I didn't feel that  
7 she had shown considerable steps towards rehabilitation  
8 already I would have made the sentence quite different  
9 than what it's going to be, but I do feel that she  
10 does need help. I don't say it's punishment, but I  
11 say some period of custody where she can obtain some  
12 training from the appropriate authorities.

13 So the Court finds the defendant was 22 years  
14 of age, is suitable for handling under the YCA Act  
15 as a youth adult offender.

16 It is judged on Count One the defendant is  
17 hereby committed to the custody of the Attorney  
18 General or his authorized representative for treatment  
19 and supervision under USC Section 5010(b) until  
20 discharged by the Federal Youth Correction Bureau of  
21 Parole provided under Section 17(c); on Count Two,  
22 the defendant is hereby committed to the custody of  
23 the Attorney General or his authorized representative  
24 for treatment and supervision under USCA Section 5010(b)  
25 until discharged by the Federal Youth Correction

1 Department, Bureau of Parole, Section 5017(e) and  
2 as to Count Four, the defendant is committed to the  
3 custody of the Attorney General or his authorized  
4 representative for treatment and supervision under  
5 18 USCA, Section 5010(b) until discharged by the Youth  
6 Correction Board of Parole, as provided under Section  
7 17(b).

8 The defendant has a right of appeal, and I assume  
9 that the Government has no objection to her remaining  
10 on bail, if the notice of appeal is filed promptly.

11 MR. KAPLAN: It will be filed within 10 days.

12 MR. BEHAR: The Government has no objection.

13 THE COURT: Is she able to afford counsel for  
14 this appeal?

15 MR. KAPLAN: Yes, her parents will get private  
16 counsel.

17 THE COURT: I'm going to note that no notice of  
18 appeal has been filed. I'll leave the notice of  
19 appeal up to you.

20 MR. KAPLAN: Yes, sir. The sentence pursuant  
21 to the Federal Youth Act, is there any average time  
22 that I could tell --

23 THE COURT: I think you'll have to talk to  
24 Probation people about that. I don't know what the  
25 standards are that they are currently using. It all



1 depends on the individual and how well the person  
2 adjusts, as far as I know. Talk to the Probation  
3 Department about it and they will give you some rules  
4 of thumb.

5 MR. KAPLAN: Thank you very much, your Honor.

6 (Whereupon, Court adjourned for the day.)

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United States of America vs. **United States District Court for**  
EASTERN DISTRICT OF NEW YORK

DEFENDANT

PAULA DALLAL

M FILMED

DOCKET NO.

75 CR-495

**JUDGMENT AND PROBATION/COMMITMENT ORDER**

In the presence of the attorney for the government  
the defendant appeared in person on this date **9 19 1975**

COUNSEL ☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL **Kenneth Kaplan**  
(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE **SEP 23 1975** ☒ NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of ☐ NOT GUILTY. Defendant is discharged.

☒ GUILTY in Counts 1, 2 and 4

Defendant has been convicted as charged of the offense(s) of violating Title 21, U.S. Code, Secs. 841(a)(1) T-18, U.S.C. Sec. 24 864, in that on or about and between March 7 and May 21, 1975, the defendant, with others, did knowingly and intentionally ~~distribute~~ combine and conspire to distribute quantities of cocaine hydrochloride, a Schedule II narcotic drug controlled substance

SENTENCE OR PROBATION ORDER

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

COMMITMENT RECOMMENDATION

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, and in the presence of the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

The Court finds that the defendant was 23 years of age at the date of conviction and is suitable for handling under the Federal Youth Correction Act (18 U.S.C. Sec. 5005-5024). as a young adult offender (18 U.S.C. Sec. 4209).

IT IS ADJUDGED on Count 1 of the indictment that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for treatment and supervision pursuant to T-18, U.S.C. Sec. 5010(b) until discharged by the Federal Youth Correction Division of the Board of Parole as provided in T-18, U.S.C. Sec. 5017(e).

IT IS ADJUDGED on Count 2 of the indictment that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for treatment and supervision pursuant to T-18, U.S.C. Sec. 5010(b) until discharged by the Federal Youth Correction Division of the Board of Parole as provided in T-18, U.S.C. Sec. 5017(e).

IT IS ADJUDGED on Count 4 of the indictment that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for treatment and supervision pursuant to T-18, U.S.C. Sec. 5010(b) until discharged by the Federal Youth Correction Division of the Board of Parole as provided in T-18, U.S.C. Sec. 5017(e).

All such sentences to be served concurrently.

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge

☐ U.S. Magistrate

Date



UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

- against -

PAULA DALLAL,

Appellant,

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

I, **James A. Steele** being duly sworn,  
depose and say that deponent is not a party to the action, is over 18 years of age and resides at  
310 W. 146th St., New York, N.Y.

That on the 27<sup>th</sup> day of October 1975 at 225 Cadman Plaza, Brooklyn, N.Y.

deponent served the annexed Appendix upon

**David G. Trager**

the **Attorney** in this action by delivering a true copy thereof to said individual  
personally. Deponent knew the person so served to be the person mentioned and described in said  
papers as the herein,

Sworn to before me, this 27<sup>th</sup>  
day of October 1975

*Robert T. Brin*

*James A. Steele*  
JAMES A. STEELE

ROBERT T. BRIN  
NOTARY PUBLIC, State of New York  
No. 31-0418950  
Qualified in New York County  
Commission Expires March 30, 1977